# RE: Line to clear - Committee - Hamilton inquiry - Times

**From:** Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**To:** [redacted] <[redacted]@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**Cc:** Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, Permanent Secretary <permanentsecretary@gov.scot>, Bruce A (Andrew) <andrew.bruce@gov.scot>, DG Organisational Development & Operations <dgodo@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Richards N (Nicola) <nicola.richards@gov.scot>, Bruce MG (Maureen) <maureen.bruce@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, French C (Craig) <craig.french@gov.scot>, Macniven R (Ruaraidh) <ruaraidh.macniven@gov.scot>, Solicitor to the Scottish Government <solicitor@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Nicholson SC (Stuart) (HR Business Partner) <stuart.nicholson@gov.scot>, [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Johnston P (Paul) <paul.johnston@gov.scot>
**Date:** Tue, 27 Oct 2020 21:58:52 +0000

Lesley,
\~
The DFM is content to clear the line.
\~
Thanks

[redacted]
\~
\~

---

**From:** [redacted] <[redacted]@gov.scot>
**Sent:** 27 October 2020 21:36
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Fraser L (Lesley) <Lesley.Fraser@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Bruce A (Andrew) <Andrew.Bruce@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Bruce MG (Maureen) <Maureen.Bruce@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Henderson G (Gavin) <Gavin.Henderson@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; French C (Craig) <Craig.French@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Solicitor to the Scottish Government <solicitor@gov.scot>; [redacted] <[redacted]@gov.scot>; Nicholson SC (Stuart) (HR Business Partner) <Stuart.Nicholson@gov.scot>; [redacted] <[redacted]@gov.scot>; Johnston P (Paul)

<Paul.Johnston@gov.scot>
**Subject:** Line to clear - Committee - Hamilton inquiry - Times
\~
Hi [redacted]
\~
Apologies for the late line.
\~
The committee has now published a letter from Mr Salmond to James Hamilton https://www.parliament.scot/HarassmentComplaintsCommittee/EMAIL_FROM_ALEX_SALMOND.pdf
\~
The Mail and the Times have both been on about it as it is being shared online.
\~
I would be grateful for clearance of the following line agreed with policy, comms and spads.
\~
A Scottish Government spokesperson said:
\~
"We are aware of the contents of Mr Salmond's letter. The remit of Mr Hamilton's work is well established, and was set out to the Parliament by the Deputy First Minister."
\~
EMAIL FROM ALEX SALMOND TO COMMITTEE CLERKS – 17 OCTOBER 2020
Dear Committee Clerks
\~
I enclose a copy of a letter dated 6 October which I sent to Mr James Hamilton, the independent adviser on the Ministerial Code. Since it is relevant to your proceedings please draw it to the attention of your Committee and you are free to publish if you wish. As you see I am representing myself directly to Mr Hamilton for the reasons stated.
\~
As yet I have received no reply or acknowledgement of this email. Yours faithfully Alex Salmond
Begin forwarded message:
\~
From: Alex Salmond Date: 6 October 2020 at 22:26:37 BST To: Alex Salmond Subject: Mr James Hamilton Mr James Hamilton Independent Adviser on the Scottish Ministerial Code 6th October 2020 Dear Mr Hamilton,
\~
Thank you for your letter of 8th September. I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can. However I would like to accept your offer of clarification on your request and ask first for answers to the following points; Firstly, I am prepared to represent myself in presenting you with evidence.
\~
I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation.
\~
I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this. Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the "court in the criminal proceedings". I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018.
\~
This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process.
\~
For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your

enquiries. You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution.
\~
I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the Government to supply you with it.
\~
Your difficulty is that you do not know what it is and I am currently debarred from informing you. Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd.
\~
However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy.
\~
I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.
\~
Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down.
\~
There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour. What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set?
\~
If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally?
\~
If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas? Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email. As I am answering your enquires personally please direct all future correspondence to me directly at [Redacted]
\~
Yours faithfully
The Rt Hon Alex Salmond
\~
\~
Thanks
[redacted]
\~
\~
\~
[redacted] [redacted]
Newsdesk
[redacted]
\~
\~

**From:** [redacted]
**Sent:** 27 November 2020 17:52
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Many thanks, I can confirm that there have been no further developments on this since the 24th November and that it would be really helpful to have comments early next week.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 27 November 2020 16:18
**To:** [redacted]@gov.scot>
**Subject:** RE: Correspondence- for comment

[redacted]

No apology required.

Can I just check that, now that the Lockerbie appeal is over, you would still like me to provide comments and that there have been no developments since your e-mail of 24 November?

If so, I will try to provide comments in the early part of next week.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 25 November 2020 13:53
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Thanks for letting me know, and apologies as I should have remembered that you had other commitments at the end of November.

I will let Mr Hamilton know.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 25 November 2020 11:10
**To:** [redacted]@gov.scot>
**Subject:** Re: Correspondence- for comment

Dear [redacted]

I'm well thanks but am one of the Crown counsel in the Lockerbie appeal which began yesterday and ends on Friday, so unable to attend to other matters this week.

Assuming the appeal ends on time - which I think it will - I can put this matter to the top of my agenda next week.

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, "[redacted]@gov.scot> wrote:

Dear Douglas,

I hope you are well.

[redacted]

Happy to discuss.

Best wishes,

[redacted]

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[redacted]

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Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**To:** [redacted]@gov.scot>
**Subject:** Re: Correspondence- for comment

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Douglas

Sent from my iPad

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Best wishes,

[redacted]

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**From:** Kevin Pringle <Kevin.Pringle@charlottestpartners.co.uk>
**Sent:** 27 November 2020 11:59
**To:** [redacted]@gov.scot>
**Subject:** Re: Personal- correspondence from James Hamilton

Dear Mr Hamilton

EMAILED VIA [redacted]

Thank you for your letter of 25 November.

I can confirm that I took part in the telephone conversation described by Geoff Aberdein. [redacted] r Aberdein was seeking advice as to whether to inform Mr Salmond, and it was agreed that it was fair he should do so. [redacted] He did not have detailed knowledge of the allegations that he was able to share, which I learned of subsequently from Mr Salmond himself, as well as from information as it entered the public domain.

I hope that this is of assistance.

Best wishes

Kevin Pringle

**From:** "[redacted]@gov.scot" <[redacted]@gov.scot>
**Date:** Wednesday, 25 November 2020 15:14
**To:** Kevin Pringle <Kevin.Pringle@charlottestpartners.co.uk>
**Subject:** Personal- correspondence from James Hamilton

Dear Kevin Pringle,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid restrictions do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[redacted]

[redacted] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [redacted].

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**From:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Sent:** 28 January 2021 17:46
**To:** [redacted] <[redacted]@gov.scot>
**Subject:** RE: Confirmation

3pm would be fine for me, thanks.

Liz

**Elizabeth Lloyd**
**Chief of Staff to the First Minister**
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [redacted]
Mobile: [redacted]
Elizabeth.Lloyd@gov.scot

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**From:** [redacted] <[redacted]@gov.scot>
**Sent:** 28 January 2021 17:42
**To:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Subject:** RE: Confirmation

Hi Liz,

The afternoon of the 3rd would be fine, so would 3pm be ok with you?

Best wishes,

[redacted]

**From:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Sent:** 27 January 2021 19:45
**To:** [redacted] <[redacted]@gov.scot>
**Subject:** RE: Confirmation

[redacted]

I can make myself available on any of those days. If there's a time on the 3rd that suits, I'd be happy to do that

Liz

**Elizabeth Lloyd**
**Chief of Staff to the First Minister**
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [redacted]
Mobile: [redacted]
Elizabeth.Lloyd@gov.scot

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**From:** [redacted] <[redacted]@gov.scot>
**Sent:** 27 January 2021 17:34
**To:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Subject:** RE: Confirmation

Hi Liz,

I've checked with Mr Hamilton, and he would like to arrange a video interview. He wondered if you were free at all later next week, perhaps on the 3rd, 4th or 5th?

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 27 January 2021 11:38
**To:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Subject:** RE: Confirmation

Hi Liz,

Apologies, I had started drafting a response to your email but wanted to check with Mr Hamilton before replying on the interview. He is considering your written statement at the moment and will confirm (hopefully today) whether he would like to proceed with an interview.

Separately, I now have confirmed the times for other interviews next week, and wondered if holding a slot at 4pm on the 1st would work for you? If Mr Hamilton concludes it is not needed we can of course cancel.

Happy to discuss the FOI.

Best wishes,

[redacted]

**From:** Lloyd E (Elizabeth) <Elizabeth.Lloyd@gov.scot>
**Sent:** 27 January 2021 11:34
**To:** [redacted] <[redacted]@gov.scot>
**Subject:** Confirmation

[redacted]

I just wanted to check you got my email on Monday with the further submission, and if you had any more clarity on whether and when it would be appropriate for me to speak to Mr Hamilton.

Also, I'll give you a call re the FoI

Liz

**Elizabeth Lloyd**
**Chief of Staff to the First Minister**
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [redacted]
Mobile: [redacted]
Elizabeth.Lloyd@gov.scot

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**From:** Douglas Ross [redacted]
**Sent:** 28 January 2021 19:51
**To:** [redacted]@gov.scot>
**Subject:** RE: [redacted]

[redacted]

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 28 January 2021 17:39
**To:** Douglas Ross [redacted]
**Subject:** RE: Mr Hamilton- video interviews

Many thanks for this, I [redacted]

[redacted]

**From:** Douglas Ross [redacted]
**Sent:** 26 January 2021 19:09
**To:** [redacted]@gov.scot>
**Subject:** RE: Mr Hamilton- video interviews

Dear [redacted]

[redacted]

Happy to discuss any matters arising.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 26 January 2021 10:18
**To:** Douglas Ross [redacted]
**Subject:** RE: Mr Hamilton- video interviewsa

Dear Douglas,

[redacted]

I think a response late afternoon or tomorrow morning would still be of assistance, I will let Mr Hamilton know of the timings so he is aware.

Best wishes,

[redacted]

**From:** Douglas Ross [redacted]
**Sent:** 25 January 2021 21:11
**To:** [redacted]@gov.scot>
**Subject:** RE: Mr Hamilton- video interviews

Dear [redacted]

Happy New Year to you. [redacted]

I am working to a deadline tomorrow on another piece of work. Hopefully I will finish it by about early to mid-afternoon which would allow me to look at [redacted] Perhaps you could let me know if a response which might come pretty late in the day or even first thing on Wednesday would still be of assistance to Mr Hamilton.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

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Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 25 January 2021 17:43
**To:** Douglas Ross [redacted]
**Subject:** [redacted]

Dear Douglas,

Apologies for the length of time since I last contacted you- hope you are well and that you had a good Christmas and New Year.

[redacted]

Happy to discuss.

Best wishes,

[redacted]

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# RE: Leslie Evans

**From:** [redacted]@gov.scot>
**To:** James Hamilton <[redacted]>
**Date:** Thu, 28 Jan 2021 17:24:00 +0000

Hi James,

No problem, I will do that now. I had spoken to the Perm Sec's private office after the call yesterday to explain I had misunderstood your intentions re the question list, and to pass on the list at that point.

Best wishes,

[redacted]

**From:** James Hamilton <[redacted]>
**Sent:** 28 January 2021 12:24
**To:** [redacted]@gov.scot>
**Subject:** Leslie Evans

Hi [redacted]

Could you send the attached letter to Leslie Evans please?

Best wishes

James

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# RE: Ministerial Code Referral

**From:** Hynd JS (James) <"/o=tse/ou=tseexchsite01/cn=recipients/cn=hyndj">
**To:** James Hamilton <[redacted]>
**Date:** Tue, 28 Jul 2020 15:51:26 +0000

Dear Mr Hamilton

I am still working my way through the different aspects of your email below. I hope to come back shortly on the terms of the final remit and I am also in the process of securing the support that you have identified.

In the interim, I attach a link to the SG website which includes details of the previous reports prepared by independent advisers. I hope this is of some help in giving you a sense of the nature and style of past reports.

https://www.gov.scot/publications/ministerial-code-advisers/

I am conscious of the deadline for your response to the Committee and will be in touch again in time for meeting that deadline.

With best wishes

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[redacted]

---

**From:** Hynd JS (James)
**Sent:** 25 July 2020 20:50
**To:** James Hamilton <[redacted]>
**Subject:** RE: Ministerial Code Referral

Dear Mr Hamilton

I am writing simply acknowledge receipt of your email.

I will pick up these various point and respond to you as soon as I can.

With best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[redacted]

**From:** James Hamilton <[redacted]>
**Sent:** 25 July 2020 13:13
**To:** Hynd JS (James) <James.Hynd@gov.scot>
**Subject:** Ministerial Code Referral

Dear Mr Hynd

Since we last spoke I have given some thought to how to proceed. I have come to the conclusion that the best course of action is to press ahead now with the task I have accepted notwithstanding the parliamentary committee's intention to issue its own report.. It is quite true that the scope of the parliamentary inquiry is broad and expressly includes the matter which I have been asked to report on under the referral procedure provided for in the Ministerial Code. However, the referral procedure is intended to produce an independent expert assessment whereas the parliamentary inquiry is likely to produce a more political result. Having undertaken the task I would be loathe to walk away from it notwithstanding the obvious difficulties.

At this stage, therefore, it is necessary to settle the terms of the remit. I was content with the draft provided in your letter and email of 30 January and I suggest that it be formally adopted by the First Minister.

It will be necessary to appoint somebody to act as secretary/ administrator /organiser to the referral procedure. This will need to be done as soon as possible as I would wish to respond to the request from the Parliament preferably before their proposed deadline of 4 August which is now just over a week away. At the very least the letter needs to be acknowledged before that date.

I would like to see some of the recent opinions given under the referral procedure to get some sense of the "house style". Are they available on a website? I assume Ms Fabiani has correctly stated the position that it has been the practice to annex evidence given to previous referrals to the independent panellist's report when issued. If so I would propose if possible to follow this practice and would now so inform the parliamentary committee. I would also propose to point out to the committee that I do not have any evidence at present concerning the matters they are asked to inquire into and will not have any such evidence other than what will be made publicly available in my report. I will suggest that in these circumstances it will not be appropriate that I should be asked to give evidence before the committee. I think this reply should be issued through the secretary to the referral as I do not think I should respond directly to the parliamentary committee using my personal email.

Finally, having had the opportunity to discuss the procedures adopted in previous referrals with Dame Elish Angiolini she has informed me that it has been a usual practice to appoint a local legal practitioner to assist the independent panel member. I would be very content to follow this practice. It is always very helpful to have somebody to discuss problems and ideas with and to assist with drafting, particularly in my situation as an outsider which while it confers the advantage of independence has the drawback that one unfamiliar with the local procedures and culture may miss important nuances.

Yours sincerely

James Hamilton

This email has been scanned by the Symantec Email Security.cloud service.

**From:** [redacted]
**Sent:** 28 August 2020 17:21
**To:** James Hamilton <[redacted]>
**Subject:** RE: Referral

Hi James,

As discussed, please see attached drafts of letters to Mr Salmond, Mr Aberdein, Liz Lloyd and the Permanent Secretary.

I have also accepted the tracked changes on the letter to the FM and adjusted the formatting. I think the line at the end about the interview would cover the issues we discussed this morning but I could add something more specific to cover this.

I had included a line in each letter requesting that the correspondent provide information in a way that is consistent with the various court orders; I think this may be overly cautious, but wondered about including it to emphasise the need for consideration of the issues around some of this information.

Best wishes,

[redacted]

**From:** James Hamilton
**Sent:** 19 August 2020 12:39
**To:** Hynd JS (James)
**Cc:** [redacted]
**Subject:** Re: Referral

Dear James

The date of 7 June 2018 was an error. It should have referred to 2 April when the first meeting between Mr Salmond and the First Minister took place. I have corrected this and expanded this part of the letter.

I have added two further questions to paragraph 4 as well as a minor correction on the first page.

I attach revised letter  with the changes tracked.

I watched on BBC last night some footage of the parliamentary inquiry in which Leslie Evans was giving evidence. I assume a transcript of the inquiry's proceedings will be available. Would it be possible for me to be provided with a copy?

Best wishes

James

On Mon, 17 Aug 2020 at 13:18, <James.Hynd@gov.scot> wrote:
Dear James

As promised, I am now working on the letters you have requested.

Here is a draft of the letter to Ms Sturgeon. I thought it worth sending this now just to test whether this is what you are looking for.

You will see that I am asking for clarification from you regarding one date, 7 June 2018.

I will press on with the other drafts.

I am also pleased to let you know that I now have someone in place to fulfil the secretariat function for you. [redacted] will now be reading into the subject and will be able to pick up the support function very soon.

James
James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]
[redacted]

**From:** James Hamilton [redacted]>
**Sent:** 14 August 2020 14:14
**To:** Hynd JS (James) <James.Hynd@gov.scot>
**Subject:** Referral

Dear James

I refer to our telephone conversation on Tuesday. I confirm that I would like you to prepare letters to go to the key potential witnesses inviting written information and observations on the issues the subject matter of the review. As we discussed I suggest I might invite a response within four weeks and request the recipients of the letters to indicate whether they can comply with this request.

The letters should invite a general response. In addition recipients should be asked to deal in particular with specific issues as follows:

**First Minister**: Details of all contacts with the former First Minister between 16 January 2018, when the first complaint against him was made, and 18 July 2018, when the second telephone conversation took place, and confirmation that there was no contact, direct or indirect, thereafter. Apart from the five contacts already disclosed, the three meetings and two telephone conversations, were there any indirect contacts? In particular, was there a meeting prior to 7 June 2018 between Mr Aberdein and the First Minister [redacted]

In the case of each meeting or contact who initiated it? Who attended, participated, witnessed or was informed about it? What was the purpose of the meeting or contact? What was the First Minister's purpose in participating? What was discussed and who said what?

The First Minister has stated that at the first meeting on 2 April 2018 she explained that she had no role in relation to the investigation or determination of the complaints. In the light of this explanation why did she not thereafter simply decline to discuss the matter further with the former First Minister? What did she see as the purpose of allowing these contacts to continue?

The First Minister should be asked to provide any notes, memoranda, minutes or other records of these meetings or contained in any communications concerning or describing any of these contacts including communications to civil servants or special advisers.

When did the First Minister inform the Permanent Secretary of these contacts? If she did not do so immediately after the first contact, why did she not do so then?

Did the First Minister ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice?

The First Minister should be asked to provide any notes, memoranda, etc., concerning or containing any such advice.

**The First Minister's Chief of Staff**. (Is this Liz Lloyd?)

This person apparently attended the first meeting. She needs to be asked for details of the meeting as above. She also needs to be asked whether she was aware of any other contacts [redacted] She should be asked for notes, memoranda, etc. as above.

**Permanent Secretary (Ms.Leslie Evans)**

She should be asked when she was first informed. What was she told about contacts with and representations on behalf of the former First Minister and when? Was she asked for or did she offer any advice? If so, what did she advise? She should be asked about how the investigation was conducted, procedures, etc. Was there any interference with these by the First Minister or any other person? Was she made aware of any representations by the

former First Minister or on his behalf? What does she know about suggestions of mediation apparently put forward by the former First Minister? Did he approach her about this at any time?

**The former First Minister**

He should be asked similar questions to those for the First Minister concerning the details of the contacts. What was his purpose in contacting the First Minister? What was her response? [redacted] e should be asked if Mr Aberdein was acting on his behalf and if so what were his instructions. Was he aware that the First Minister had no role in relation to the investigations? Has he any written notes or memoranda?

**Mr Aberdein**

[redacted]

If you can do drafts incorporating these questions I will approve them. Please also let me know if there is anything further you think should be asked at this stage. Each letter should indicate that I may wish to revert with further questions, and also that each recipient is invited to inform me of any other matters they consider might be relevant. Finally, please feel free to make any general or particular comments or observations you think might be appropriate. As you are aware I am concerned about the possibility of some matters being hidden under the cloak of legal professional privilege but on reflection I think it better to leave this unless and until it arises.

Best wishes

James

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James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [redacted]@gov.scot

Liz Lloyd,
Chief of Staff to the First Minister,
St Andrew's House
Edinburgh
EH1 3DG

---

[ ] August 2020

Dear Liz Lloyd,

**SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [redacted]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions [redacted] whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. In the case of the first meeting (2 April 2018) disclosed in the First Minister's statement of 8 January 2019, which you are said to have attended, I should be grateful if you would confirm:
2.
    2.1. Who initiated each meeting or contact?
    2.2. Who attended, participated, witnessed or was informed about each meeting or contact?
    2.3. What was the purpose of each meeting or contact?
    2.4. What was your purpose in participating in each meeting or contact?
    2.5. What was discussed and who said what on each occasion?
    2.6. What was the duration of each meeting or contact?
    2.7. Was any record of the meeting or contact made?

3. [redacted]

4. Were you asked for any advice in relation to the meetings or contacts by the First Minister or the Permanent Secretary, or did you provide any advice in relation to the meetings or contacts?

5. Did you take any action as a result of the meetings or contacts described above? If so, what was this?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [redacted]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [redacted]@gov.scot

Lesley Evans
Permanent Secretary
St Andrew's House
Edinburgh
EH1 3DG

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[ ] August 2020

Dear Lesley Evans,

**SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

As you know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [redacted]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions; whether you were aware of any attempt by the First Minister, Mr Salmond, or any other party, to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. In her statement to Parliament on 8 January 2019, the First Minister has disclosed five contacts (three meetings and two telephone conversations) with Mr Salmond. When were you first informed of the contacts between the First Minister and Mr Salmond, and any representations to the First Minister, or any civil servant or special advisor, made on behalf of Mr Salmond?

2. What information was provided to you about the contacts and meetings between the First Minister and Mr Salmond, and any representations made on Mr Salmond's behalf?

3. Did you, or any other civil servant or special adviser, provide advice to the First Minister on contacts with or representations received from Mr Salmond? If so, when was this advice provided and what was the content of this advice. Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

4. How was the investigation into the complaints against Mr Salmond conducted? What procedures were followed and applied? What was the role of the First Minister in relation to the investigation? Was there any involvement from the First Minister, or any other person acting on behalf of the First Minister, in the investigation? Were there any representations received, either directly or indirectly, from Mr Salmond or anyone acting on his behalf?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [redacted]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [redacted]@gov.scot

Alex Salmond,
c/o

___

[ ] August 2020

Dear Mr Salmond,

**SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [redacted]

My purpose in writing is to seek your cooperation in my enquiries, and to request from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit.

This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with the First Minister; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you, or anyone representing you, had with the First Minister or any civil servant or special advisor between 16 January 2018, when the first complaint was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when a second telephone conversation took place, which, according to the First Minister, was the last contact between the First Minister and yourself. Could you also provide details of the purpose of your communication with the First Minister?

2. In the case of each meeting or contact disclosed by the First Minister in previous statements on this matter, I should be grateful if you would confirm:

3. In the case of each of the meetings or contacts set out in my remit, or any other meetings between the FM and yourself , I should be grateful if you would confirm:

    3.1. Who initiated each meeting or contact?
    3.2. Who attended, participated, witnessed or was informed about each meeting or contact?
    3.3. What was the purpose of each meeting or contact?
    3.4. What was your purpose in participating in each meeting or contact? In what capacity were you at the meeting?
    3.5. What was discussed and who said what on each occasion?
    3.6. What was the duration of each meeting or contact?
    3.7. What was the conclusion of each meeting or contact?
    3.8. Was any record of the meeting or contact made?

4. More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications between yourself and Mr Aberdein.

5. What was your understanding of the role of the First Minister in respect of the investigations into the complaints made?

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that I will wish to invite you to an interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [redacted]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [redacted]@gov.scot

Nicola Sturgeon MSP
First Minister
St Andrew's House
Edinburgh
EH1 3DG

___

[ ] August 2020

Dear First Minister

**SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

As you know, I have been appointed as the independent adviser to consider your self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [redacted]

My purpose in writing is to seek from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit. This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular, the series of contacts that you had with Mr Salmond; the extent to which you considered the application of the requirements of the Ministerial Code in relation to those meetings; whether you are satisfied that you have complied with the requirements of the Code at all times; whether you attempted to bring influence to bear on the ongoing investigation by the Scottish Government of the allegations that had been made under Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with Mr Salmond between 16 January 2018, when the first complaint against him was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when your second telephone conversation took place, which, according to your statement to the Scottish Parliament on 8 January 2019, was the last contact you had with Mr Salmond. Can you also please confirm whether there was any contact, direct or indirect, thereafter.

2. Apart from the five contacts (three meetings and two telephone conversations) already disclosed in your statement to Parliament on 8 January 2019, were there any indirect contacts?
   2.1. In particular, was there a meeting or meetings prior to your first meeting with Mr Salmond on 2 Apri[redacted] between you, or any person acting on your behalf or reporting to you, and Geoff Aberdein, Mr Salmond's former chief of staff, or Mr Salmond himself or any other person representing or reporting to him?
   2.2. If so, who attended any such meeting or meetings and what was discussed?
   2.3. When did you become aware of any such meetings?

3. [redacted]

4. In the case of each meeting or contact disclosed in your statement of 8 January 2919, I should be grateful if you would confirm:
   4.1. Who initiated each meeting or contact?
   4.2. Who attended, participated, witnessed or was informed about each meeting or contact?
   4.3. What was the purpose of each meeting or contact?
   4.4. What was your purpose in participating in each meeting or contact?
   4.5. What was discussed and who said what on each occasion?
   4.6. What was the duration of each meeting or contact?
   4.7. Was any record of the meeting or contact made?

5. You have stated that at the first meeting on 2 April 2018 you explained that you had no role in relation to the investigation or determination of the complaints under the Scottish Government Procedure. In the light of this explanation, can you please advise me why you did not thereafter simply decline to discuss the matter further with the Mr Salmond Minister? What did you see as the purpose of allowing these contacts to continue after the first occasion?

6. When did you inform the Permanent Secretary of these contacts? If you did not do so immediately after the first contact, why did you not do so then?

7. Did you ask the Permanent Secretary, or any other civil servant or special adviser, for advice or receive any advice from any such person, in connection with any matters raised in the course of contacts with the former First Minister? If so, when, and what was the import of the advice? Can you please provide me with copies of any notes, memoranda, etc., concerning or containing any such advice.

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that it will be necessary to interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [redacted]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton

James Hamilton
Independent Adviser on the Scottish Ministerial Code

c/o E: [redacted]@gov.scot

Geoff Aberdein,
c/o

___

[ ] August 2020

Dear Mr Aberdein,

**SCOTTISH MINISTERIAL CODE: FIRST MINISTER'S SELF-REFERRAL**

As you may know, I have been appointed as the independent adviser to consider the First Minister's self-referral under the Ministerial Code. I attach a copy of the Parliamentary answer which sets out the remit for the referral [redacted]

My purpose in writing is to seek your cooperation in my enquiries, and to request from you a range of information to assist me in preparing my report.

I would be grateful if you would supply me with a general statement about your actions and involvement in the matters covered by my remit.

This should include, but not be limited to: an indication of what were the intentions that lay behind your actions and, in particular your involvement in any of the series of contacts between the First Minister and Mr Salmond as set out in my remit; details of any further meeting that you are aware of or participated in; and, any other information that would assist me in my considerations.

In addition to a general statement, I would welcome your response to a series of specific questions as follows:

1. Details of all contacts you had with the First Minister [redacted] between 16 January 2018, when the first complaint against Mr Salmond was made under the Scottish Government's Procedure for the Handling of Harassment Complaints involving Current or Former Ministers, and 18 July 2018, when a second telephone conversation took place, which, according to the First Minister, was the last contact between the First Minister and Mr Salmond.

2. In the case of each of the meetings or contacts set out in my remit, or any other meetings between the FM and Mr Salmond, in which you had any involvement , I should be grateful if you would confirm:
   2.1. Who initiated each meeting or contact?
   2.2. Who attended, participated, witnessed or was informed about each meeting or contact?
   2.3. What was the purpose of each meeting or contact?
   2.4. What was your purpose in participating in each meeting or contact? In what capacity were you at the meeting? Were you acting on Mr Salmond's behalf in some or all of the meetings or contacts? If so, what were your instructions?
   2.5. What was discussed and who said what on each occasion?
   2.6. What was the duration of each meeting or contact?
   2.7. What was the conclusion of each meeting or contact?
   2.8. Was any record of the meeting or contact made?

More generally, can you please provide me, whether in electronic or physical form, any notes, memoranda, minutes or other records of the meetings disclosed or contained in any communications concerning or describing any of these contacts, including communications to civil servants or special advisers.

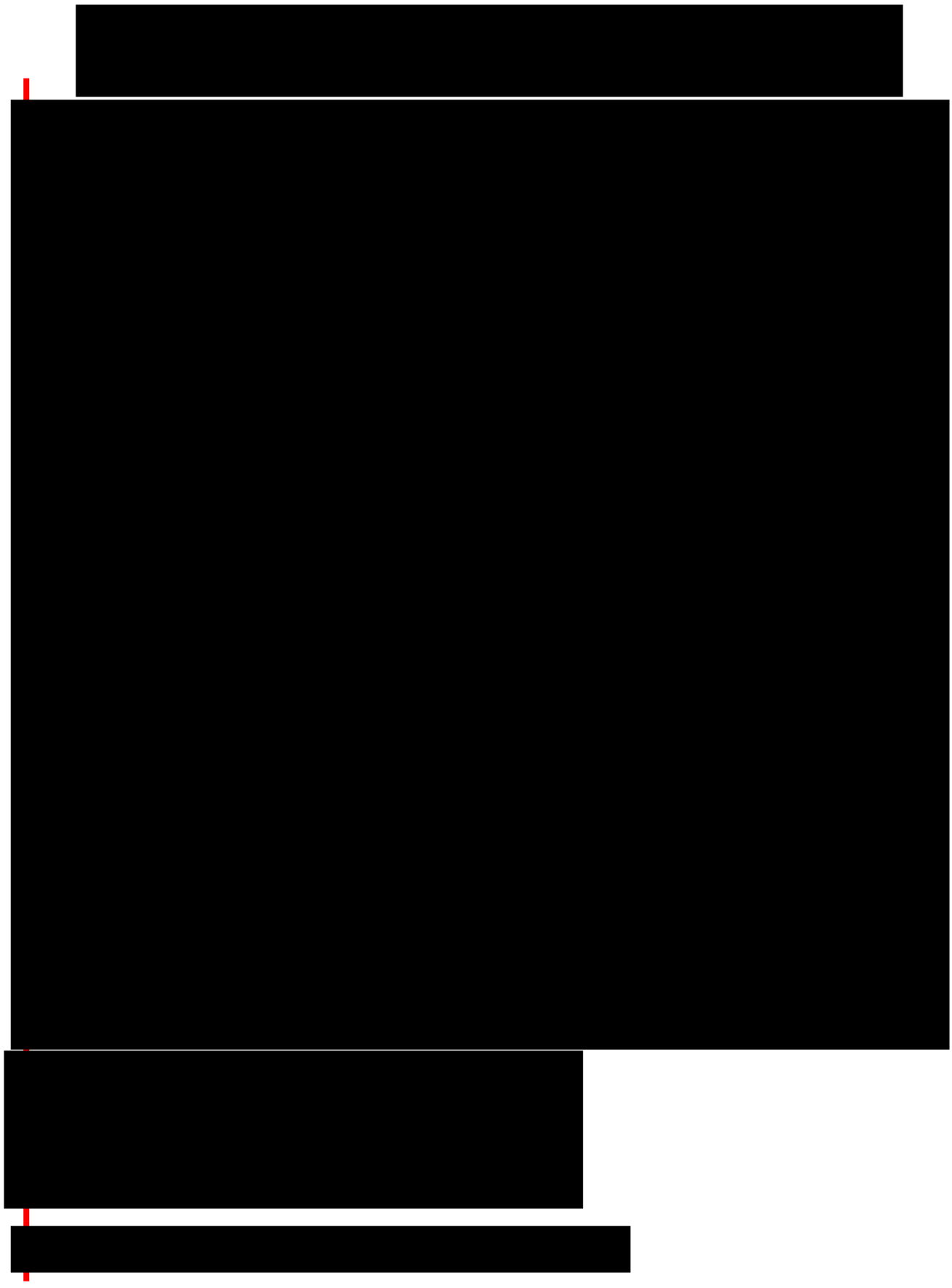
It is important that I advise you that information provided to me may be referred to and/or disclosed in my report, which I expect will be published by the Scottish Government in due course. I will write to you in advance of the publication of the report to inform you of any information to be published. I will take all necessary advice to ensure that my report is consistent with all relevant legal considerations, including any court orders applying to the matters under consideration. You will wish to make sure that information you provide is also consistent with the orders set out by the court.

Once I have the material requested above, I expect that I will wish to invite you to an interview you about these matters. Given the current travel restrictions, any meeting will take place remotely.

It would be helpful to have your response to this letter by [redacted]
Please let me know if this deadline is likely to pose a difficulty for you or if you need any clarification about any aspect of my request.

Yours Sincerely

James Hamilton



**From:** [redacted]
**Sent:** 28 October 2020 15:51
**To:** 'James Hamilton' [redacted]
**Subject:** RE: Updated response to Mr Salmond

Hi James,

Many thanks and apologies, I had taken a bit longer to get to this than I hoped. I have attached a password protected word file with the response from Mr Aberdein- if you download and use the password in the same way as for the FM response that should work I think.

I have also copied the text of his email, as follows:

Best wishes,

[redacted]

[redacted]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

**From:** James Hamilton [redacted]
**Sent:** 28 October 2020 15:20
**To:** [redacted]@gov.scot>
**Subject:** Re: Updated response to Mr Salmond

Hi [redacted]

I have redrafted the proposed letter to Mr Aberdein.

You have the advantage of me in that you have seen the material and I have not.

What concerns me is that there is no guarantee that all this might end in litigation at some point so I do not want to give any ondertakings which I might not be able to keep.

[redacted]

If you need to discuss further you can phone me.

Best wishes

James

On Wed, 28 Oct 2020 at 13:48, [redacted]@gov.scot> wrote:
Dear James,

Please see attached updated correspondence with Mr Salmond. I have combined the letters, added a short intro and the content at the end about timings. I intend to offer an apology for the delay in acknowledging the email in the covering email as well if that's ok?

[redacted]

I have also included some text below to respond to Mr Aberdein.

Best wishes,

[redacted]

---

Dear Mr Aberdein,

Thank you for your email. I can confirm that Mr Hamilton has received your submission.

Mr Hamilton is intending to conduct his work on a confidential basis and submissions made to him will be used for the purposes of his deliberations and not shared with other parties. He will however be preparing a final report for publication, and information included in submissions may be included in or referred to in that report as appropriate. Mr Hamilton is also ensuring that the report is consistent with the relevant court orders on these matters.

Please let me know if you need any more information.

Best wishes,

[redacted]

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**WRITTEN SUBMISSION OF GEOFFREY ROGER ABERDEIN**

**FOR THE COMMITTEE**

**ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS**

## CONTEXT

This submission is made in response to the request received from the Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee").

This submission is consistent with evidence previously provided to officers of Police Scotland, particularly during a police interview in June 2019. I have, where required, updated this statement to include relevant additional information as requested by the Committee. I have made every effort to abide by the legal parameters set out by the Committee.

It will, however, be for the Committee clerks to make an independent assessment of that before sharing this statement with the committee members and thereafter reaching a decision on publication more widely. I confirm that I have no objection to this statement being published in full, if that is the wish of the Committee, providing that the Committee's legal parameters are met.

The Submission records my responses to all of the listed areas of interest, the questions posed and requests made by the Convener. Those are addressed in chronological order. Included within the Submission are all communications I hold, relevant to the remit of the inquiry, with any of the individuals named by the Committee.

## BACKGROUND

By way of background I was a Special Adviser to the First Minister of Scotland between May 2007 and November 2014. I was appointed Chief of Staff following the SNP's victory in the 2011 Scottish General Election. I have not been active in front line politics since I left the Scottish Government in November 2014.

In the role of Chief of Staff I was responsible for the Special Adviser team and coordinated political support and advice for the First Minister as well as the entire Ministerial team.

My role was extremely demanding involving long hours. Indeed, the entire Special Adviser team had a strong work ethic and we all performed our roles in a high pressure environment. Ultimately, it was a rewarding experience and, from my own perspective, it was a privilege to serve the Scottish Government throughout one of the most memorable and significant periods in Scottish political history.

On a personal level, I was also particularly fortunate to work closely with Nicola Sturgeon and John Swinney, both of whom I could always turn to for friendship and wise counsel throughout my time in Government. I am disappointed to read of various news reports of 'opposing camps' as far as the SNP is concerned. That does not reflect my experience of advising the SNP and Scottish Government.

## MINISTERIAL CODE

[redacted]

[redacted]

[redacted]

[redacted]

A few hours after my meeting with [redacted], I arranged a conference call with Duncan Hamilton and Kevin Pringle [redacted] I wanted to seek their advice on whether or not to inform Alex Salmond. It was agreed between us that Mr Salmond required to be informed of the allegations.

It was agreed that I should do so. In the interests of transparency, the only other individual I spoke with about the content of [redacted] approach to [redacted] was Lorraine Kay, a former Scottish Government civil servant [redacted]

[redacted]

I spoke with Alex Salmond in the early evening of either 9 or 10 March, over the phone. [redacted] He informed me that he had, separately, already received a letter from the Scottish Government outlining the allegations of two complainers. He relayed to me, in very high level, a summary of the complaints. During a very brief call (I recall he was in transit at the time) he pointed out that he harboured serious concerns about the process which the Scottish Government had deployed in investigating the complaints.

I am not certain of the exact date but sometime following that call Mr Salmond intimated to me he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. [redacted]

[redacted]

On Thursday 29 March 2018 I met with the First Minister and Ms Lloyd in the First Minister's office in the Scottish Parliament. [redacted] It was a very brief meeting, lasting no longer than fifteen minutes. I relayed to the First Minister a broad summary of the complaints as

described to me by Mr Salmond. The First Minister said that the meeting with Alex Salmond was going ahead on Monday 2 April 2018 at her home in Glasgow.

Immediately after the meeting on 29 March, I called Duncan Hamilton who is an Advocate and had been instructed to act for Mr Salmond. Mr Hamilton is also a former MSP and had worked closely with both Mr Salmond and the First Minister in the past. I summarised my discussion with the First Minister [redacted] I relayed to him the First Minister had confirmed the invitation to the meeting with Mr Salmond and that it would proceed on 2 April at her home in Glasgow.

I attended the meeting on 2 April 2018 along with Mr Salmond, Duncan Hamilton and Liz Lloyd.

Following brief pleasantries, there was a lengthy private conversation in the First Minister's conservatory between the First Minister and Mr Salmond, one which Mr Hamilton, Ms Lloyd and I were not party to. After which Mr Hamilton, Ms Lloyd and I joined the First Minister and Mr Salmond when there were general discussions on the allegations detailed in the letter sent by the Scottish Government and a reiteration by Mr Salmond of his concerns about the legality of the process being followed.

I am aware that there has been considerable discussion about whether these were 'party' meetings or 'government' meetings. To be frank, as a private individual that was not my concern and nor was it discussed.

[redacted]

As indicated below in Appendix 4 and for information only, I have provided the response from my mobile telephone provider to a request from my lawyer seeking relevant telephone and text messages that may have assisted the Committee.

On 8 January 2019, Mr Salmond was successful with his Judicial Review challenge of the Scottish Government's handling of those complaints.

The First Minister made a statement to the Scottish Parliament later on 8 January 2019 in response to the judicial review outcome and revealed that she had met and spoken with Mr Salmond on a number of subsequent occasions to the 2 April 2018 meeting.

With reference to any meetings or discussions which occurred between the First Minister and Mr Salmond after the 2 April 2018 meeting, I did not arrange, attend or participate in any of them.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**CULTURE**

With reference to the matters set out under the heading 'Culture' in the Invitation, I confirm that the totality of my response is set out under the heading 'BACKGROUND' above.

**CONCLUSION**

I confirm that this submission contains the totality of my responses to all of the listed areas of interest, the questions posed and requests made in the Invitation. It has been prepared in a comprehensive manner and to the best of my knowledge and recollection. If asked by the Committee to do so, I will provide the content of this statement in the form of a sworn affidavit.

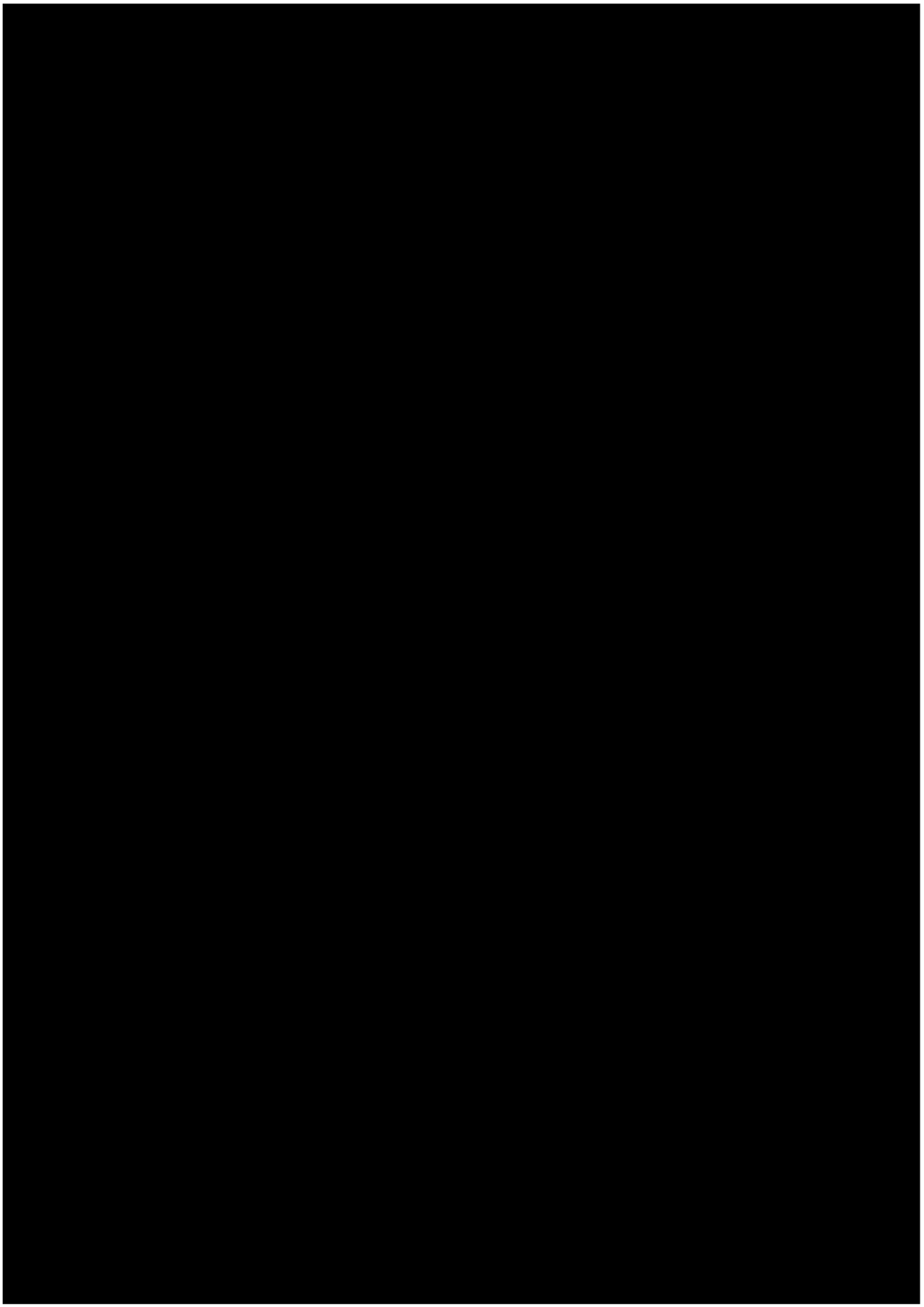
Geoff Aberdein
9 October 2020

[redacted]

Appendix 1

[redacted]

[redacted]



- **APPENDIX 4**

Aberdein Considine
Property Legal Financial
5-9 Bon-Accord Cresent
Aberdeen
AB11 6DN

**Contact Number:** [redacted]
**Email:** customer.data.disclosures@ee.co.uk
**Your Ref:** RA/IAM
**Our Ref:** 2061037

**23 June 2020**

Dear Sirs,

**RE: Subject Access Request under the Data Protection Act 2018**

Thank you for your enquiry received 22 June 2020, regarding your client Geoff Aberdein of [redacted]

This is in connection with the disclosure of call records from 1 February 2018 to 31 January 2019 and in respect of EE mobile number [redacted]

I'm afraid that on this occasion we're unable to assist with your enquiry.

This is because we only retain mobile telephone Communications Records for a period of 12 months (There is no business requirement to retain these communication records any further).

We have no further preservation capability and the records are not copied as archive tapes nor stored on any other media. Once deleted from our systems, they are not available in any form whatsoever.

If you require any Communication Records from the last 12 months we're unable to proceed with your request until we have received our customers signed authority to include telephone number, full name, address with postcode and date of birth recorded on the customer account.

6 Camberwell Way
Doxford Technology Park
Sunderland
Tyne and Wear
SR3 3XN

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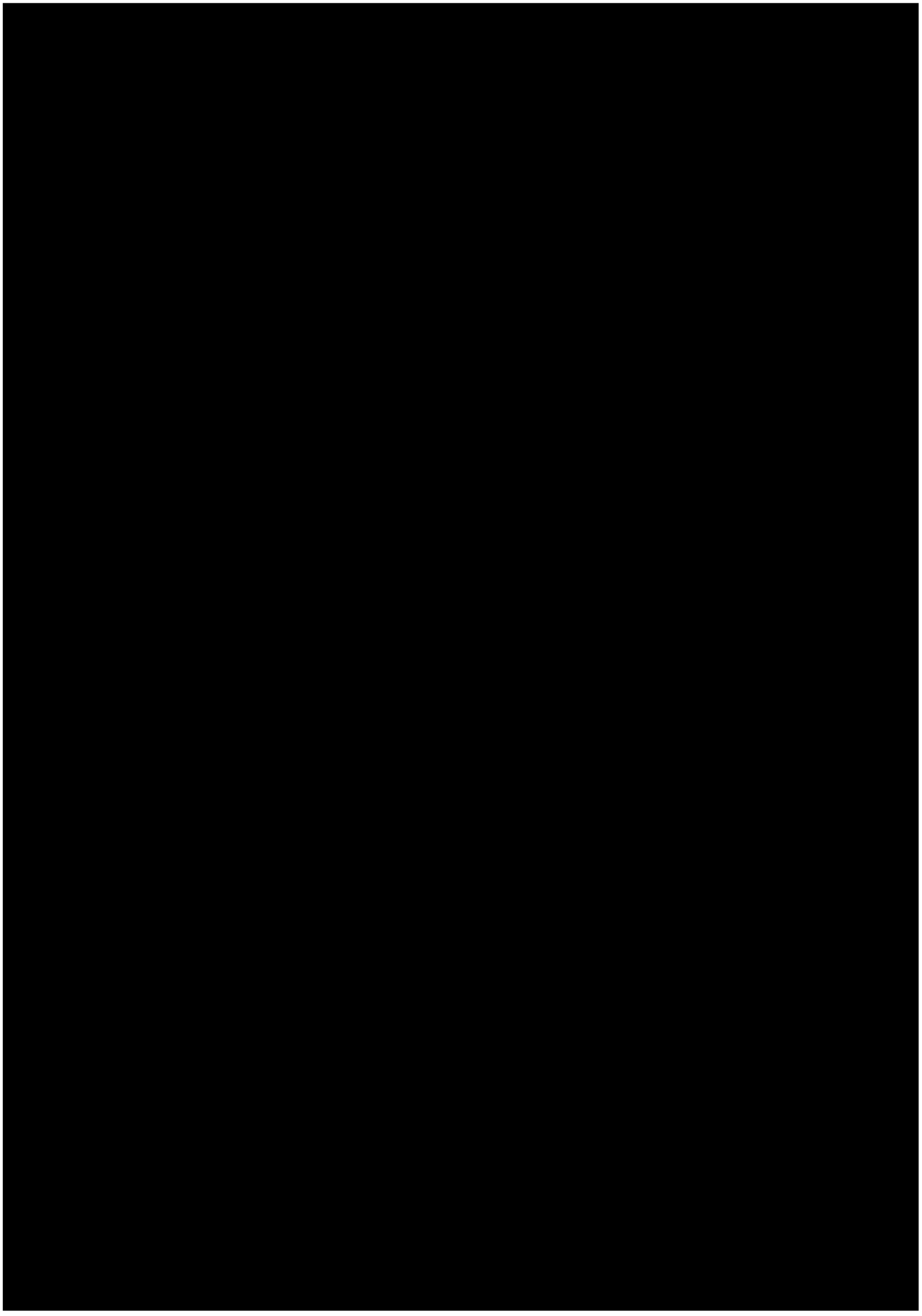

**From:** [redacted]
**Sent:** 28 October 2020 08:55
**To:** James Hamilton [redacted]
**Subject:** FW: James Hamilton- Ministerial code referral

For discussion later.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

**From:** [redacted]
**Sent:** 28 October 2020 18:24
**To:** James Hamilton [redacted]
**Subject:** RE: [redacted]

I've now had a chance to consider the points in detail. I think we could add a short line on the interlocutors [redacted]
I have added something in the attached.

**From:** [redacted]
**Sent:** 28 October 2020 17:56
**To:** 'James Hamilton'
**Subject:** FW: [redacted]
**Importance:** High

From Mr Ross. Just reading it now.

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 28 October 2020 17:55
**To:** [redacted]@gov.scot>
**Subject:** [redacted]
**Importance:** High

[redacted]

[redacted]

Regards

Douglas

**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

*Leading Top Ranked Set in Chambers & Partners and The Legal 500*

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_____

- 
- **Draft letter to Mr Salmond**
- 
- Dear Mr Salmond,
- 
- Thank you for your emails of 8th October and 17th October asking various clarification questions about the work I am undertaking. I apologise for the delay in acknowledging your first email, and for the delay in providing a substantive response. Your correspondence raised a number of significant questions which I wanted to give full consideration to.
- 
- Regarding the first point, I note what you say about representing yourself. I will, of course, have no control over what you put in your submissions. I can confirm that I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.
- 
- In relation to your second point, thank you for drawing my attention to the two court interlocutors attached to your letter. I will have regard to these when conducting my investigation. I would indeed appreciate receiving a copy of the letter from the Crown Office which you refer to. Again, as I have just stated, I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.
- 
- On the third point, as you will know, James Hynd's role as head of Cabinet Secretariat includes supporting Ministers in matters relating to the Ministerial Code. On that basis, Mr Hynd supported the Deputy First Minister in establishing the referral I have been asked to undertake.
- 
- Mr Hynd has stepped away from the process and [redacted] has been appointed as Head of Secretariat Support to support my work as I require. I can confirm therefore that James Hynd will not play any role in relation to the day to day conduct of the inquiry or in the finalisation of my report and any recommendations that I may make.
- 
- I note your comment concerning my remit. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister's failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances.
- 
- In relation to the issues raised in your second email, I can confirm that any response to my enquiries relating to the factual matters I am asked to enquire into will be used in the compilation of the report. I have not yet decided fully on the format of the report but any reply to such enquiries will be liable to be published with the exception of material which cannot be made public as a result of court orders or for other legal reasons.
- 

- I have set out various matters relevant to your questions in my recent correspondence with the Parliamentary committee.
-
- https://www.parliament.scot/HarassmentComplaintsCommittee/James_Hamilton.pdf
-
- With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it proper or necessary in the public interest and in particular in the interests of transparency to give a full reply.
-
- For that reason I cannot exclude the possibility that any correspondence between us might at some stage be published.
-
- I hope this answers your questions.
-
- As you know, I am currently in the process of considering written submissions and what additional information I may need to gather. It would be helpful if you were able to indicate when you would be able to offer a written submission.

**From:** [redacted]
**Sent:** 28 October 2020 13:48
**To:** James Hamilton [redacted]
**Subject:** Updated response to Mr Salmond

Dear James,

Please see attached updated correspondence with Mr Salmond. I have combined the letters, added a short intro and the content at the end about timings. I intend to offer an apology for the delay in acknowledging the email in the covering email as well if that's ok?

Mr Ross [redacted] by close of play today, so if we send the response this evening it will hopefully be with some legal input.

I have also included some text below to respond to Mr Aberdein.

Best wishes,

[redacted]

---

Dear Mr Aberdein,

Thank you for your email. I can confirm that Mr Hamilton has received your submission.

Mr Hamilton is intending to conduct his work on a confidential basis and submissions made to him will be used for the purposes of his deliberations and not shared with other parties. He will however be preparing a final report for publication, and information included in submissions may be included in or referred to in that report as appropriate. Mr Hamilton is also ensuring that the report is consistent with the relevant court orders on these matters.

Please let me know if you need any more information.

Best wishes,

[redacted]

Draft letter to Mr Salmond

Dear Mr Salmond,

Thank you for your emails of 8th October and 17th October~~,~~ asking various clarification questions about the work I am undertaking. I apologise for the delay in acknowledging your first email, and for the delay in providing a substantive response. Your correspondence raised a number of significant questions which I wanted to give full consideration to.

Regarding the first point, I note what you say about representing yourself. I will, of course, have no control over what you put in your submissions. I can confirm that I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

In relation to your second point, thank you for drawing my attention to the two court interlocutors attached to your letter. I would indeed appreciate receiving a copy of the letter from the Crown Office which you refer to. Again, as I have just stated, I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

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I have set out various matters relevant to your questions in my recent correspondence with the Parliamentary committee.

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With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it proper or necessary in the public interest and in particular in the interests of transparency to give a full reply.

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I hope this answers your questions.

As you know, I am currently in the process of considering written submissions and what additional information I may need to gather. It would be helpful if you were able to indicate when you would be able to offer a written submission.

**From:** Geoff Aberdein [redacted]
**Sent:** 28 October 2020 10:30
**To:** [redacted]@gov.scot>
**Subject:** Re: Scottish Ministerial Code

[redacted]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

---

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WRITTEN SUBMISSION OF GEOFFREY ROGER ABERDEIN

FOR THE COMMITTEE

ON THE SCOTTISH GOVERNMENT HANDLING OF HARASSMENT COMPLAINTS

## CONTEXT

This submission is made in response to the request received from the Convener of the Scottish Parliament's Committee on Scottish Government Handling of Harassment Complaints ("the Committee").

This submission is consistent with evidence previously provided to officers of Police Scotland, particularly during a police interview in June 2019. I have, where required, updated this statement to include relevant additional information as requested by the Committee. I have made every effort to abide by the legal parameters set out by the Committee.

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By way of background I was a Special Adviser to the First Minister of Scotland between May 2007 and November 2014. I was appointed Chief of Staff following the SNP's victory in the 2011 Scottish General Election. I have not been active in front line politics since I left the Scottish Government in November 2014.

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## MINISTERIAL CODE

[redacted]

[redacted]

[redacted]

[redacted]

A few hours after my meeting with [redacted] I arranged a conference call with Duncan Hamilton and Kevin Pringle [redacted] I wanted to seek their advice on whether or not to inform Alex Salmond. It was agreed between us that Mr Salmond required to be informed of the allegations.

It was agreed that I should do so. In the interests of transparency, the only other individual I spoke with about the content of [redacted] approach to [redacted] was Lorraine Kay, a former Scottish Government civil servant [redacted].

[redacted]

I spoke with Alex Salmond in the early evening of either 9 or 10 March, over the phone. [redacted] He informed me that he had, separately, already received a letter from the Scottish Government outlining the allegations of two complainers. He relayed to me, in very high level, a summary of the complaints. During a very brief call (I recall he was in transit at the time) he pointed out that he harboured serious concerns about the process which the Scottish Government had deployed in investigating the complaints.

I am not certain of the exact date but sometime following that call Mr Salmond intimated to me he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. [redacted]

[redacted] On Thursday 29 March 2018 I met with the First Minister in the First Minister's office in the Scottish Parliament. [redacted] It was a very brief meeting, lasting no longer than fifteen minutes. I relayed to the First Minister a broad summary of the complaints as described to me by Mr Salmond. The First Minister said that the meeting with Alex Salmond was going ahead on Monday 2 April 2018 at her home in Glasgow.

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I am aware that there has been considerable discussion about whether these were 'party' meetings or 'government' meetings. To be frank, as a private individual that was not my concern and nor was it discussed.

[redacted]

As indicated below in Appendix 4 and for information only, I have provided the response from my mobile telephone provider to a request from my lawyer seeking relevant telephone and text messages that may have assisted the Committee.

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With reference to any meetings or discussions which occurred between the First Minister and Mr Salmond after the 2 April 2018 meeting, I did not arrange, attend or participate in any of them.

[redacted]

[redacted]

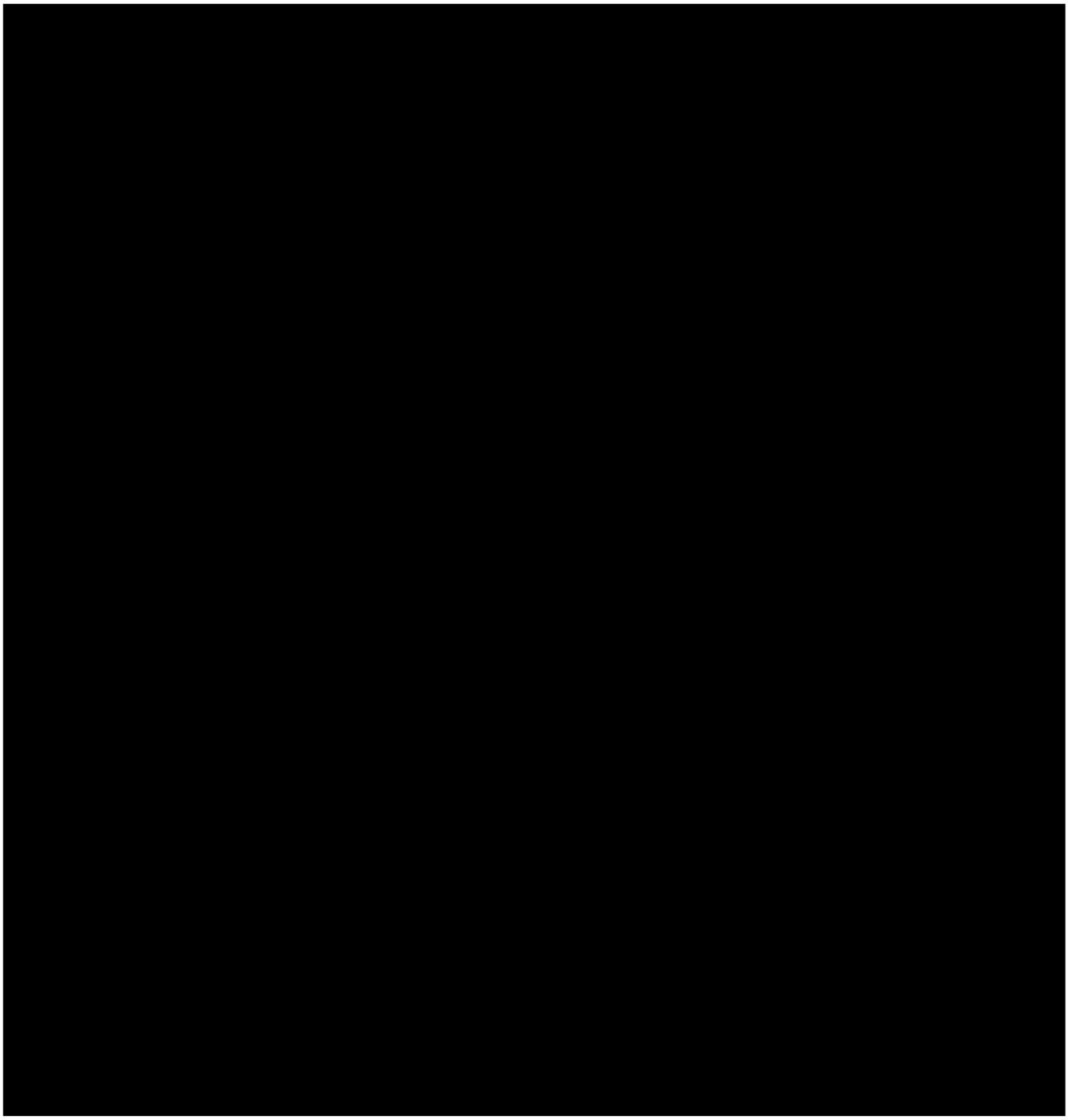
CULTURE

With reference to the matters set out under the heading ‘Culture’ in the Invitation, I confirm that the totality of my response is set out under the heading ‘BACKGROUND’ above.

CONCLUSION

I confirm that this submission contains the totality of my responses to all of the listed areas of interest, the questions posed and requests made in the Invitation. It has been prepared in a comprehensive manner and to the best of my knowledge and recollection. If asked by the Committee to do so, I will provide the content of this statement in the form of a sworn affidavit.
Geoff Aberdein

9 October 2020 6



[redacted]

**From:** [redacted]
**Sent:** 28 October 2020 15:51
**To:** 'James Hamilton' <[redacted]>
**Subject:** RE: Updated response to Mr Salmond

Hi James,

Many thanks and apologies, I had taken a bit longer to get to this than I hoped. I have attached a password protected word file with the response from Mr Aberdein- if you download and use the password in the same way as for the FM response that should work I think.

I have also copied the text of his email, as follows:

Best wishes,

[redacted]

[redacted]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

**From:** James Hamilton <[redacted]
**Sent:** 28 October 2020 15:20
**To:** [redacted]@gov.scot>
**Subject:** Re: Updated response to Mr Salmond

Hi [redacted]

I have redrafted the proposed letter to Mr Aberdein.

You have the advantage of me in that you have seen the material and I have not.

What concerns me is that there is no guarantee that all this might end in litigation at some point so I do not want to give any ondertakings which I might not be able to keep.

It would probably be useful if Mr Ross saw this letter as well.

If you need to discuss further you can phone me.

Best wishes

James

On Wed, 28 Oct 2020 at 13:48, <[redacted]@gov.scot> wrote:
Dear James,

Please see attached updated correspondence with Mr Salmond. I have combined the letters, added a short intro and the content at the end about timings. I intend to offer an apology for the delay in acknowledging the email in the covering email as well if that's ok?

Mr Ross is hoping to provide brief comments on the approach by close of play today, so if we send the response this evening it will hopefully be with some legal input.

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Please let me know if you need any more information.

Best wishes,

[redacted]

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**WRITTEN SUBMISSION OF GEOFFREY ROGER ABERDEIN**

**FOR THE COMMITTEE**

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[redacted]

[redacted]

[redacted]

[redacted]

A few hours after my meeting with [redacted], I arranged a conference call with Duncan Hamilton and Kevin Pringle [redacted] I wanted to seek their advice on whether or not to inform Alex Salmond. It was agreed between us that Mr Salmond required to be informed of the allegations.

It was agreed that I should do so. In the interests of transparency, the only other individual I spoke with about the content of [redacted] approach to [redacted] was Lorraine Kay, a former Scottish Government civil servant [redacted]

[redacted]

I spoke with Alex Salmond in the early evening of either 9 or 10 March, over the phone. [redacted] He informed me that he had, separately, already received a letter from the Scottish Government outlining the allegations of two complainers. He relayed to me, in very high level, a summary of the complaints. During a very brief call (I recall he was in transit at the time) he pointed out that he harboured serious concerns about the process which the Scottish Government had deployed in investigating the complaints.

I am not certain of the exact date but sometime following that call Mr Salmond intimated to me he would like to have a meeting with the First Minister in person to set out his concerns about the Scottish Government's handling of the complaints. [redacted]

[redacted]

On Thursday 29 March 2018 I met with the First Minister [redacted] in the First Minister's office in the Scottish Parliament. [redacted] It was a very brief meeting, lasting no longer than fifteen minutes. I relayed to the First Minister a broad summary of the complaints as

described to me by Mr Salmond. The First Minister said that the meeting with Alex Salmond was going ahead on Monday 2 April 2018 at her home in Glasgow.

Immediately after the meeting on 29 March, I called Duncan Hamilton who is an Advocate and had been instructed to act for Mr Salmond. Mr Hamilton is also a former MSP and had worked closely with both Mr Salmond and the First Minister in the past. I summarised my discussion with the First Minister [redacted]. I relayed to him the First Minister had confirmed the invitation to the meeting with Mr Salmond and that it would proceed on 2 April at her home in Glasgow.

I attended the meeting on 2 April 2018 along with Mr Salmond, Duncan Hamilton and Liz Lloyd.

Following brief pleasantries, there was a lengthy private conversation in the First Minister's conservatory between the First Minister and Mr Salmond, one which Mr Hamilton, Ms Lloyd and I were not party to. After which Mr Hamilton, Ms Lloyd and I joined the First Minister and Mr Salmond when there were general discussions on the allegations detailed in the letter sent by the Scottish Government and a reiteration by Mr Salmond of his concerns about the legality of the process being followed.

I am aware that there has been considerable discussion about whether these were 'party' meetings or 'government' meetings. To be frank, as a private individual that was not my concern and nor was it discussed.

[redacted]

As indicated below in Appendix 4 and for information only, I have provided the response from my mobile telephone provider to a request from my lawyer seeking relevant telephone and text messages that may have assisted the Committee.

On 8 January 2019, Mr Salmond was successful with his Judicial Review challenge of the Scottish Government's handling of those complaints.

The First Minister made a statement to the Scottish Parliament later on 8 January 2019 in response to the judicial review outcome and revealed that she had met and spoken with Mr Salmond on a number of subsequent occasions to the 2 April 2018 meeting.

With reference to any meetings or discussions which occurred between the First Minister and Mr Salmond after the 2 April 2018 meeting, I did not arrange, attend or participate in any of them.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

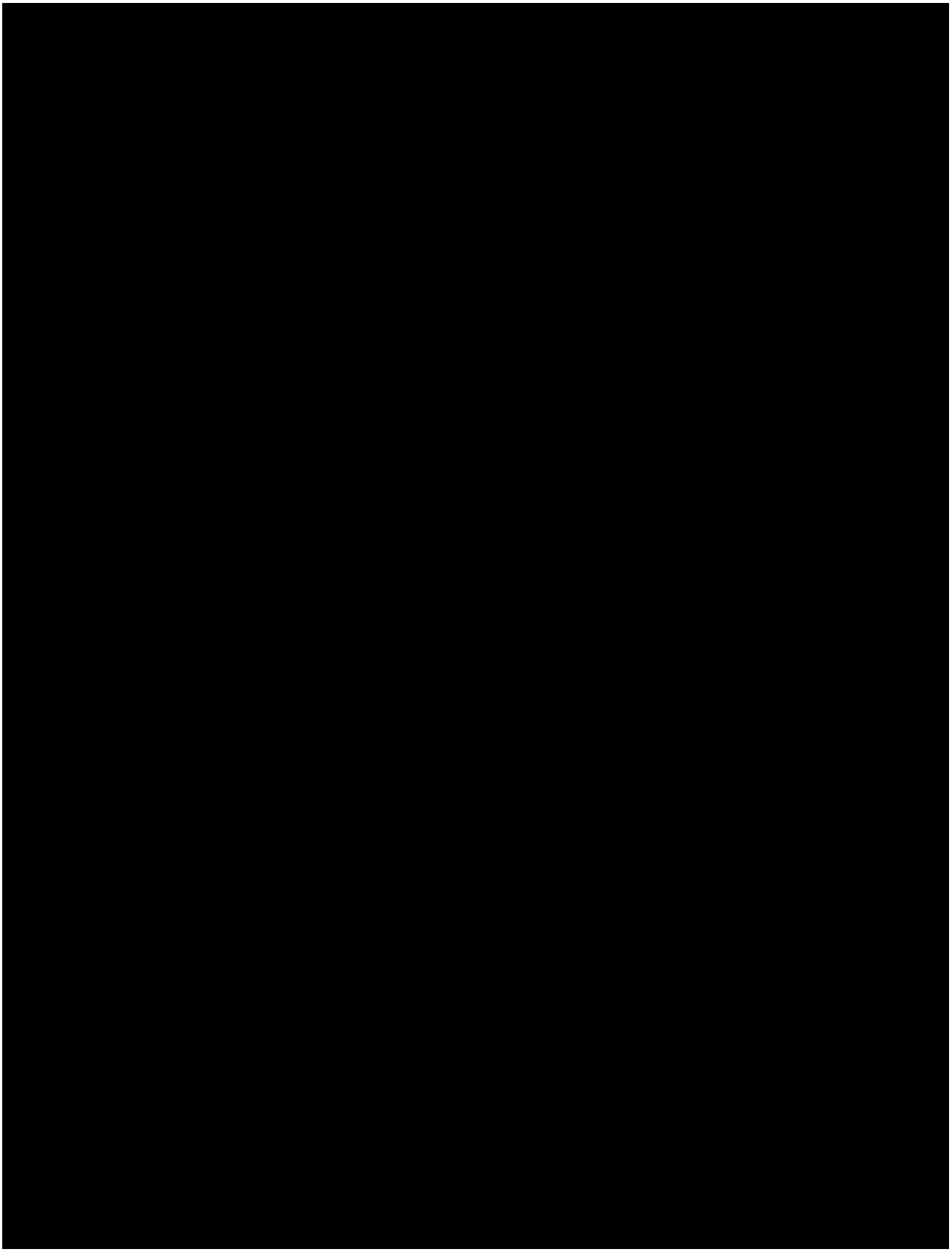
**CULTURE**

With reference to the matters set out under the heading 'Culture' in the Invitation, I confirm that the totality of my response is set out under the heading 'BACKGROUND' above.

**CONCLUSION**

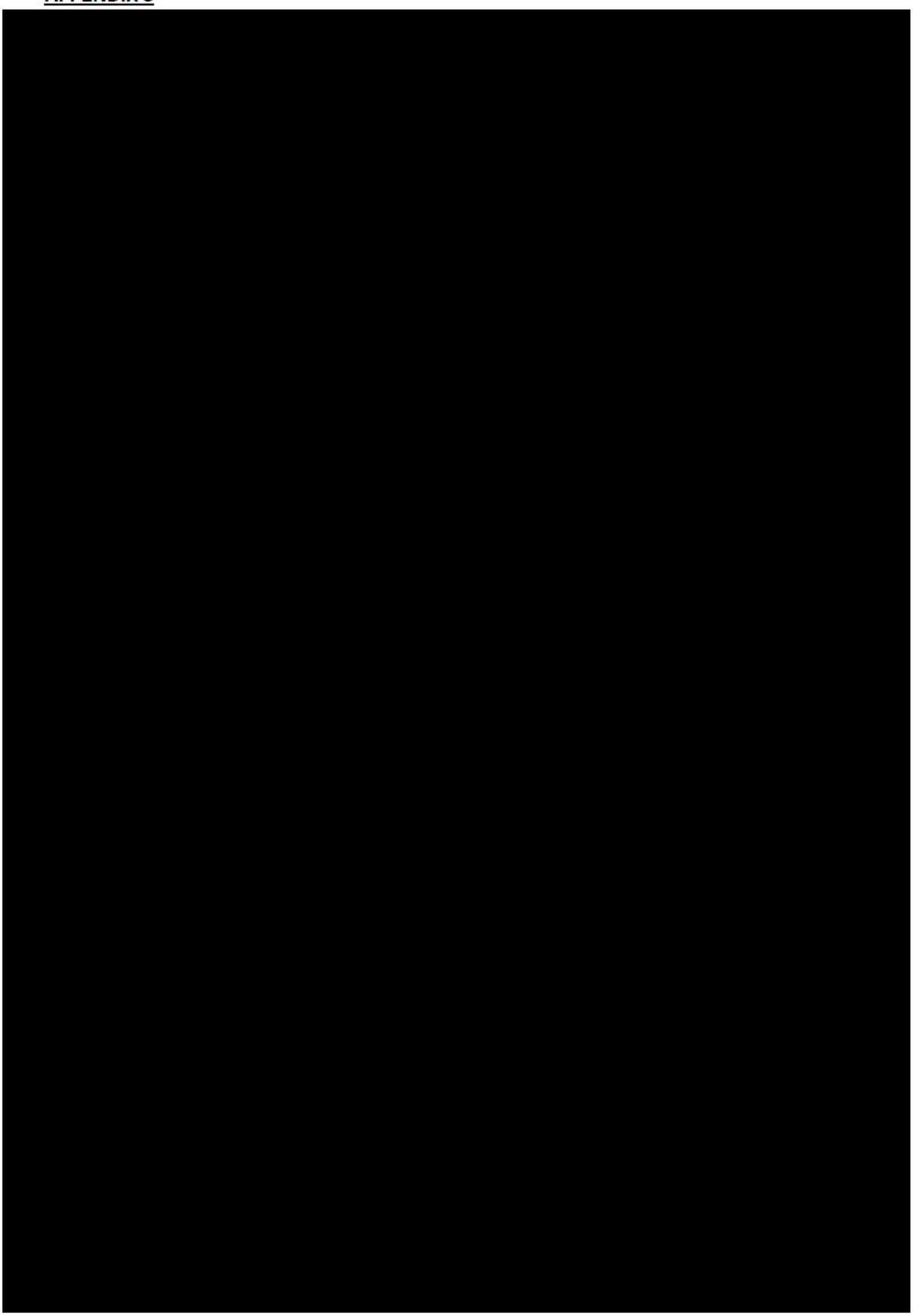
I confirm that this submission contains the totality of my responses to all of the listed areas of interest, the questions posed and requests made in the Invitation. It has been prepared in a comprehensive manner and to the best of my knowledge and recollection. If asked by the Committee to do so, I will provide the content of this statement in the form of a sworn affidavit.

Geoff Aberdein
9 October 2020



[redacted]

**APPENDIX 3**



- **APPENDIX 4**

Aberdein Considine
Property Legal Financial
5-9 Bon-Accord Cresent
Aberdeen
AB11 6DN

**Contact Number:** [redacted]
**Email:** customer.data.disclosures@ee.co.uk
**Your Ref:** RA/IAM
**Our Ref:** 2061037

**23 June 2020**

Dear Sirs,

**RE: Subject Access Request under the Data Protection Act 2018**

Thank you for your enquiry received 22 June 2020, regarding your client Geoff Aberdein of [redacted]

This is in connection with the disclosure of call records from 1 February 2018 to 31 January 2019 and in respect of EE mobile number [redacted]

I'm afraid that on this occasion we're unable to assist with your enquiry.

This is because we only retain mobile telephone Communications Records for a period of 12 months (There is no business requirement to retain these communication records any further).

We have no further preservation capability and the records are not copied as archive tapes nor stored on any other media. Once deleted from our systems, they are not available in any form whatsoever.

If you require any Communication Records from the last 12 months we're unable to proceed with your request until we have received our customers signed authority to include telephone number, full name, address with postcode and date of birth recorded on the customer account.

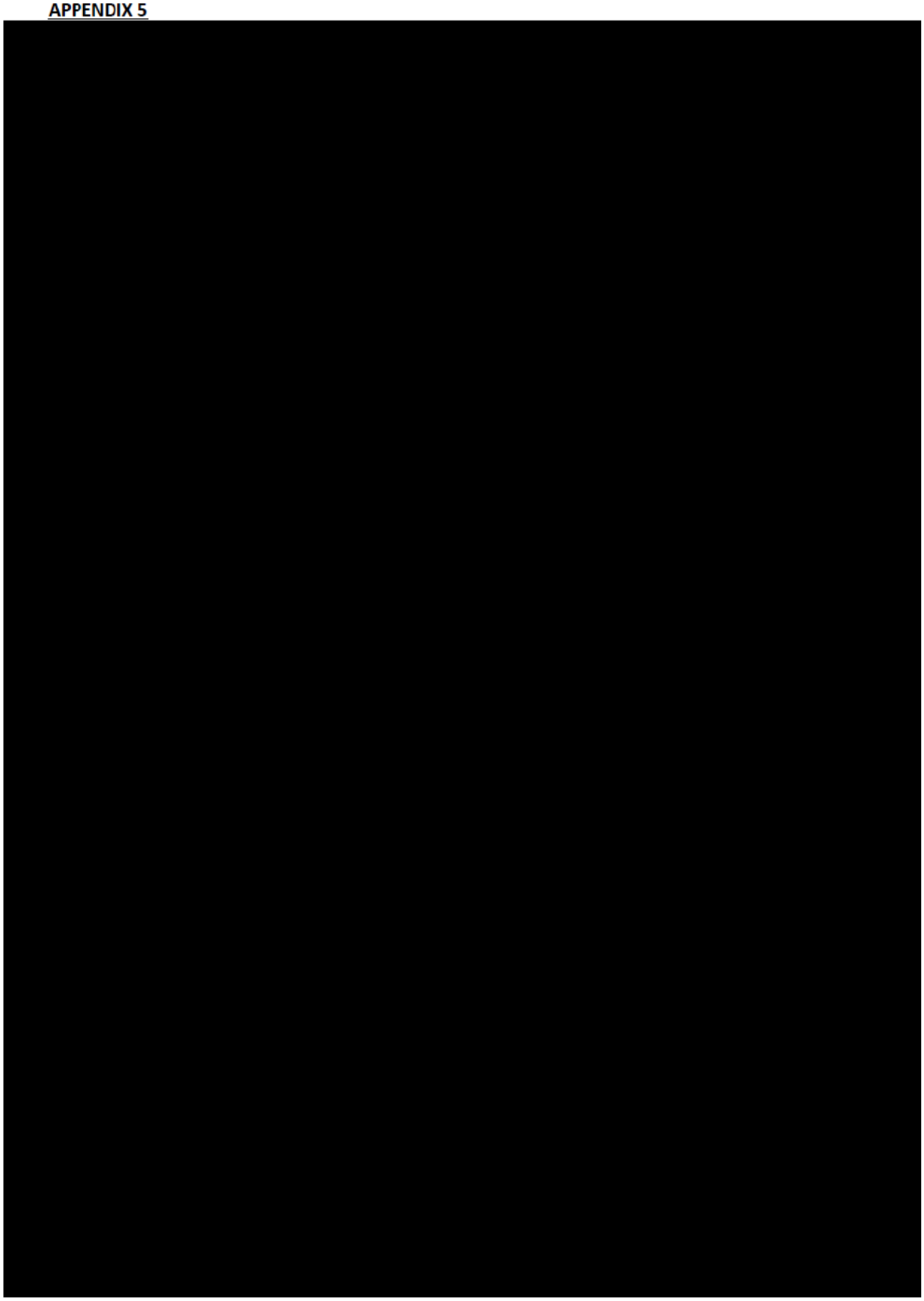
6 Camberwell Way
Doxford Technology Park
Sunderland
Tyne and Wear
SR3 3XN

ee.co.uk

Registered in England and Wales as EE Limited

Registered office:
EE Limited
Trident Place
Mosquito Way
Hatfield
Hertfordshire
AL10 9BW
Company number 02382161

**APPENDIX 5**



# RE: LINE TO CLEAR Follow-up media enquiry - re Hamilton inquiry - Guardian

**From:** Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**To:** [redacted]) <[redacted]@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**Cc:** [redacted]) <[redacted]@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [redacted] <[redacted]@gov.scot>, Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, [redacted]) <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, [redacted]) <[redacted]@gov.scot>
**Date:** Wed, 28 Oct 2020 19:02:40 +0000

[redacted]

DFM has approved the lines

Thanks

[redacted]

[redacted]
DPS to DFM
[redacted]

---

**From:** [redacted]
**Sent:** 28 October 2020 18:55
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills
**Cc:** [redacted]; Fraser L (Lesley) ; McAllister C (Colin) ; [redacted]; [redacted]; Nicolson S (Stuart) Special Adviser ; Hynd JS (James) ; [redacted]; [redacted] ; Rogers D (David) (Constitution and Cabinet Director) ; [redacted]
**Subject:** RE: LINE TO CLEAR Follow-up media enquiry - re Hamilton inquiry - Guardian

Adding duty colleague [redacted]

---

**From:** [redacted]
**Sent:** 28 October 2020 17:52
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** [redacted] <[redacted]@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>
**Subject:** LINE TO CLEAR Follow-up media enquiry - re Hamilton inquiry - Guardian

PO DFM

Further to the line we issued to the Times last night, [redacted]at the Guardian is asking for the wording of James Hamilton's remit – and if it's correct that James is providing Mr Hamilton with administrative support. PIs see reporter's email below.

On the first part, we'll send the reporter this link: https://beta.parliament.scot/chamber-and-committees/debates-and-questions/questions/2020/08/03/s5w31054

And we'll answer the reporter's question *Is it correct that Mr Hamilton is getting administrative support from Scottish government civil servant James Hynd?* by saying: No. Administrative support is provided by a civil servant who is not a senior civil servant and who has had no prior involvement in any aspect of this matter.

And if pressed on James's previous involvement, we will say: Mr Hynd assisted the DFM with the establishment of the referral. After that initial process Mr Hynd stepped away from any involvement in the conduct of Mr Hamilton's enquiries.

Would DFM be content with this approach please?

Best wishes

[redacted]

[redacted] | Team Leader | Newsdesk | Scottish Government | news.gov.scot | Desk: [redacted] Mobile: [redacted]

REPORTER'S EMAIL

Hi [redacted] - could you send me the exact wording of James Hamilton's remit, as per the appointment and terms of reference letter he has been given by the Scottish government, please.

Is it correct that Mr Hamilton is getting administrative support from Scottish government civil servant James Hynd? If not, which officials provide Mr Hamilton with administrative support.

# RE: LINE TO RE-ISSUE PLS: Conservative call to expand Hamilton inquiry - The Herald

**From:** Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**To:** [redacted]<[redacted]@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**Cc:** [redacted]<[redacted]@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, [redacted]<[redacted]@gov.scot>, Hynd JS (James) <james.hynd@gov.scot>, [redacted]<[redacted]@gov.scot>, [redacted]<[redacted]@gov.scot>, Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>, [redacted]<[redacted]@gov.scot>
**Date:** Wed, 28 Oct 2020 20:06:49 +0000

Hi
\~
DFM has approved the lines
\~
Thanks
\~
[redacted]
\~
[redacted]
DPS to DFM
[redacted]
\~

**From:** [redacted]) <[redacted]@gov.scot>
**Sent:** 28 October 2020 18:54
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** [redacted]) <[redacted]@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [redacted]) <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted]) <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted]) <[redacted]@gov.scot>
**Subject**: LINE TO RE-ISSUE PLS: Conservative call to expand Hamilton inquiry - The Herald
\~
PO DFM
\~
The Herald are asking for comment on the Conservative news release below which adds to Mr Salmond's call for the Hamilton inquiry to be expanded.
\~
We intend to re-issue the line DFM cleared on this last night, minus the first few words about us being aware of Mr Salmond's letter.
So the line will say: Scottish Government spokesperson said: "The remit of Mr Hamilton's work is well established, and was set out to parliament by the Deputy First Minister."
Would DFM be content with this please?
\~
Best wishes,
\~
[redacted]

**Ministerial Code breach investigation must be expanded**

\~
Scottish Conservative and Unionist Party press office
Wednesday, 28 October, 2020
FAO: all newsdesks
Embargo: for immediate release
\~
The Scottish Conservatives have called for the investigation into possible breaches of the Ministerial Code by Nicola Sturgeon to be expanded.
\~
It follows the publication of a letter late last night from Alex Salmond to James Hamilton, the independent adviser examining if the code was broken.
\~
In the letter, the former First Minister says the current investigation is setting up a "straw man".
\~
He outlines very specific examples, citing particular points in the Ministerial Code, of where the investigation is too limited.
\~
**Scottish Conservative spokesman on the Salmond inquiry, Murdo Fraser MSP, said:** "Rightly or wrongly, the First Minister is being dragged through the mud by Mr Salmond. Given the seriousness of the claims, expanding the remit of the Ministerial Code investigation and letting the independent adviser rule on what happened is the only plausible course of action.
\~
"Mr Salmond went through numerous Ministerial Code investigations himself. Not only is he familiar with the process, he has also seen exactly where the government went wrong in the court documents disclosed during the judicial review. His points are specific and in this instance, appear to be credible.
\~
"However, this is not about siding with Alex Salmond or Nicola Sturgeon. This is about the abuse of government power and the misleading of the Scottish Parliament.
\~
"If the First Minister has nothing to hide and Mr Salmond's claims have no basis in fact, then the SNP Government must expand the Ministerial Code investigation and find out the truth.
\~
"The only reason to limit the investigation is if they have something to hide."
\~
**Notes**
\~
The letter from Mr Salmond includes the following lines:
\~
'the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down.'
\~
'What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set?... will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?'

\~
ENDS
\~
**********
The Scottish Parliament: Making a positive difference to the lives of the
\~
\~

# RE: LINE TO RE-ISSUE PLS: Conservative call to expand Hamilton inquiry - The Herald

**From:** [redacted] <[redacted]@gov.scot>
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>, [redacted] <[redacted]>
**Cc:** [redacted] <[redacted]@gov.scot>, Fraser L (Lesley) <lesley.fraser@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot> [redacted] <[redacted]>, [redacted] <[redacted]@gov.scot>, Hynd JS (James) <james.hynd@gov.scot> [redacted] <[redacted]@gov.scot>, [redacted] <[redacted]@gov.scot>, Nicolson S (Stuart) Special Adviser <stuart.nicolson@gov.scot>, Rogers D (David) (Constitution and Cabinet Director) <david.rogers@gov.scot>
**Date:** Wed, 28 Oct 2020 20:12:07 +0000

Thanks again [redacted], I'll issue just now.
\~
Best,
\~
[redacted]
\~

---

**From:** [redacted] <[redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
**Sent:** 28 October 2020 20:07
**To:** [redacted] <[redacted]@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** [redacted] <[redacted]@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [redacted] <[redacted]@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; [redacted] <[redacted]@gov.scot>; [redacted] <[redacted]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted] <[redacted]@gov.scot>
**Subject**: RE: LINE TO RE-ISSUE PLS: Conservative call to expand Hamilton inquiry - The Herald
\~
Hi
\~
DFM has approved the lines
\~
Thanks
\~
[redacted]
\~
[redacted]
DPS to DFM
[redacted]
\~

---

**From:** [redacted] <[redacted]@gov.scot>
**Sent:** 28 October 2020 18:54
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** [redacted] <[redacted]@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; [redacted] <[redacted]@gov.scot>; Hynd JS

(James) <James.Hynd@gov.scot>; [redacted]) <[redacted]@gov.scot>; [redacted]) <[redacted]@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>; Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; [redacted] <[redacted]@gov.scot>
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\~
Best wishes,
\~
[redacted]

## Ministerial Code breach investigation must be expanded

\~
Scottish Conservative and Unionist Party press office
Wednesday, 28 October, 2020
FAO: all newsdesks
Embargo: for immediate release
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In the letter, the former First Minister says the current investigation is setting up a "straw man".
\~
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\~
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\~
"Mr Salmond went through numerous Ministerial Code investigations himself. Not only is he familiar with the process, he has also seen exactly where the government went wrong in the court documents disclosed during the judicial review. His points are specific and in this instance, appear to be credible.
\~
"However, this is not about siding with Alex Salmond or Nicola Sturgeon. This is about the abuse of government power and the misleading of the Scottish Parliament.
\~
"If the First Minister has nothing to hide and Mr Salmond's claims have no basis in fact, then the SNP Government must expand the Ministerial Code investigation and find out the truth.

\~
"The only reason to limit the investigation is if they have something to hide."
\~
**Notes**
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The letter from Mr Salmond includes the following lines:
\~
'the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down.'
\~
'What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set?... will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?'
\~
ENDS
\~
**********
The Scottish Parliament: Making a positive difference to the lives of the
\~
\~

Constitution and Cabinet Directorate
Cabinet, Parliament and Governance Division

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: [redacted]
E: james.hynd@gov.scot

James Hamilton
[redacted]

29 July 2020

Dear Mr Hamilton

**SCOTTISH MINISTERIAL CODE: REFERRAL**

I an writing to you in connection with the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code.

I now attach a revised remit which updates the version we discussed in early 2019. The key changes that have been made are to reflect the fact that criminal proceedings are no longer active, although a relevant court order regarding anonymity remains in place, and to bring into scope an additional meeting that might be relevant. Both new sections are highlighted in the remit.

The remit, with these changes, has now been agreed by the Deputy First Minister, John Swinney MSP, who has been delegated to lead on this matter in place of the First Minister.

If you are content to proceed on this basis, we are likely to publish the remit by way of an answer to a Parliamentary Question in the Scottish Parliment. We would aim to do this on Tuesday 4 August, to coincide with your reply to the Committee due that day.

I am working on putting in place the adminstrative and legal support to assist you in the way you have outlined. I will report back on this as soon as I can. In the interim, I would be happy to pass on to the Committee on your behalf your reply to their letter.

Please let me know if it would be helpful to discuss this further

Yours Sincerely

**James Hynd**

**Ministerial Code: Remit for Independent Adviser**

Background

It has been alleged that the First Minister breached the Scottish Ministerial Code in that she failed to feed back the basic facts of meetings and discussions held with Alex Salmond to her private office as required by sections 4.22 and 4.23 of the Code. The meetings and discussions in question took place on:

- 29 March 2018 – Meeting between Ms Sturgeon and Geoff Aberdein, former Chief of Staff to Mr Salmond, Scottish Parliament
- 2 April 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 23 April 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.
- 7 June 2018 - Meeting between Ms Sturgeon and Mr Salmond at SNP Conference, Aberdeen.
- 14 July 2018 - Meeting between Ms Sturgeon and Mr Salmond at Ms Sturgeon's home.
- 18 July 2018 - Telephone conversation between Ms Sturgeon and Mr Salmond.

It is has been further suggested that, in light of those meetings, the First Minister may have attempted to influence the conduct of the investigation then being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure for Handling of Harassment Complaints involving Current or Former Ministers ("the Procedure").

Scottish Ministerial Code

The key relevant extracts from the Code are:

> *1.6. Ministers are personally responsible for deciding how to act and conduct themselves in the light of the Ministerial Code and for justifying their actions to Parliament and the public. The First Minister is, however, the ultimate judge of the standards of behaviour expected of a Minister and of the appropriate consequences of a breach of those standards. Although the First Minister will not expect to comment on every matter which could conceivably be brought to his or her attention, Ministers can only remain in office for so long as they retain the First Minister's confidence.*
>
> *1.7. Where he or she deems it appropriate, the First Minister may refer matters to the independent advisers on the Ministerial Code to provide him or her with advice on which to base his or her judgement about any action required in respect of Ministerial conduct. The findings of the independent advisers will be published.*

***Contacts with External Individuals and Organisations, including Outside Interest Groups and Lobbyists***

> *4.22 Ministers meet many people and organisations and consider a wide range of views as part of the formulation of Government policy. Meetings on official business should normally be arranged through Private Offices. A private secretary or official should be present for all discussions relating to Government business. Private Offices should arrange for the basic facts of formal meetings between Ministers and outside interest groups to be recorded, setting out the reasons for the meeting, the names of those attending and the interests represented. A monthly list of engagements carried out by all Ministers is published three months in arrears.*
>
> *4.23 If Ministers meet external organisations or individuals and find themselves discussing official business without an official present – for example at a party conference, social occasion or on holiday – any significant content (such as substantive issues relating to Government decisions or contracts) should be passed back to their Private Offices as soon as*


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*possible after the event, who should arrange for the basic facts of such meetings to be recorded in accordance with paragraph 4.22 above.*

The First Minister has, accordingly, referred the matter for consideration by one or both Independent Advisers for advice on which to base her judgement about any action required in accordance with the Code.

Remit

The remit for the referral is to:

1. Review any relevant documentation relating to the meetings and discussions listed above.
2. Interview any Minister or official of the Scottish Government, including Special Advisers, who may have any knowledge of the facts and content of the meetings and discussions, to assess whether the Ministerial Code is engaged and, if so, whether the terms of the Code have been complied with.
3. Interview any relevant person outwith the Scottish Government, including the former First Minister, Alex Salmond, who may have information relating to the facts and content of the meetings and discussions.
4. Determine if there is any evidence that the First Minister attempted to use information discussed during those meetings and discussions to influence the conduct of the investigation being undertaken by the Permanent Secretary into allegations made against Mr Salmond under the Procedure.
5. Provide the Deputy First Minister with a report setting out the findings and conclusions with regard to:
    i. whether the Ministerial Code is engaged regarding the meetings and discussions;
    ii. whether there has been any breach of the Code and the nature of any such breach; and
    iii. if a breach has occurred, advice on the appropriate remedy or sanction.
6. The Independent Adviser is further invited to consider and offer views on whether the Ministerial Code might need revision to reflect the terms of the Procedure and the strict limitations it places on the involvement of the First Minister in cases which fall to be considered under the Procedure.

Timing

The Independent Adviser is invited to commence the investigation and submit a report as soon as possible.

Publication

The terms of this remit will be published.

The final report will be published. If required, the report will be redacted to remove the risk of any complainant being identified and otherwise to ensure compliance with the terms of the order made by the court in the criminal proceedings.

Payment

Appointment as an Independent Adviser does not attract payment. Reasonable travel and subsistence costs will be paid in line with normal Civil Service rules.

Secretariat

The Scottish Government will provide secretariat support as required.

Scottish Government
July 2020



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# RE: Ministerial Code - First Minister's Self-Referral

**From:** Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**To:** Hynd JS (James) <james.hynd@gov.scot>, Deputy First Minister and Cabinet Secretary for Education and Skills <dfmcse@gov.scot>
**Cc:** Hogg KJ (Kenneth) <kenneth.hogg@gov.scot>, McAllister C (Colin) <colin.mcallister@gov.scot>, DG Organisational Development & Operations <dgodo@gov.scot>
**Date:** Wed, 29 Jul 2020 11:56:22 +0000

HI James,

The DFM notes the position and approves the remit with the addition of a reference to the meeting on 29 March. Can you please take forward the practical issues of support for Mr Hamilton so this can progress.

Thanks

[redacted]

[redacted] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot |Tel: [redacted] | Email: DFMCSE@gov.scot

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**From:** Hynd JS (James) <James.Hynd@gov.scot>
**Sent:** 27 July 2020 22:52
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
**Subject:** RE: Ministerial Code - First Minister's Self-Referral

top copy DFM PO

Further to my emails below, here is a further note and attachments for DFM's consideration.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03

St Andrew's House
Edinburgh
[redacted]

**From:** [redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
**Sent:** 11 July 2020 08:59
**To:** Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
**Subject:** RE: Ministerial Code - First Minister's Self-Referral

Morning James

DFM has noted and asked to be kept advised.

Many thanks

[redacted]

[redacted]
DPS to DFM
[redacted]

**From:** Hynd JS (James) <James.Hynd@gov.scot>
**Sent:** 10 July 2020 17:51
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
**Subject:** RE: Ministerial Code - First Minister's Self-Referral

DFM

This is to record that earlier today I spoke to Mr Hamilton about the next steps in the self-referral process and whether the letter he has received from the Parliamentary Committee (link below) might have any implications from his perspective

Mr Hamilton expressed significant misgivings about the approach being taken by the Committee. While he will give the matter further thought, his current sense is that the Committee's approach has the potential to duplicate what he would be seeking to do in the referral process. At this stage, he is not sure that it would be possible or desirable to have parallel processes in train.

He said that he would give the matter further consideration and revert to me next week.

https://www.parliament.scot/HarassmentComplaintsCommittee/20200707LettertoJamesHamiltonwrittenevidence.pdf

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[redacted]

**From:** [redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
**Sent:** 08 July 2020 07:25
**To:** Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
**Subject:** RE: Ministerial Code - First Minister's Self-Referral

Good morning James

DFM is content with the recommended approach and asks that these matters be taken forward. DFM is separately addressing the issues put to him by Lesley Fraser raised by the Committee Inquiry.

Many thanks

[redacted]

[redacted]
DPS to DFM
[redacted]

**From:** Hynd JS (James) <James.Hynd@gov.scot>
**Sent:** 07 July 2020 23:50
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>
**Subject:** Ministerial Code - First Minister's Self-Referral

Top copy DFM

3 page minute and 2 page annex.

James

James Hynd
Head of Cabinet, Parliament and Governance Division

Room 4N:03
St Andrew's House
Edinburgh
[redacted]

**From** [redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
**Sent:** 05 June 2020 14:06
**To:** Hynd JS (James) <James.Hynd@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
**Subject:** RE: OFF-SEN: FFM complaints-related workstreams

Hi James

The DFM has noted.

Thanks

[redacted]
DPS to DFM
[redacted]

**From:** Hynd JS (James) <James.Hynd@gov.scot>
**Sent:** 03 June 2020 18:21
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>; Nicolson S (Stuart) Special Adviser <Stuart.Nicolson@gov.scot>
**Subject:** RE: OFF-SEN: FFM complaints-related workstreams

DFM

I have this afternoon spoken to James Hamilton about the Ministerial Code referral. He remains available to undertake this work.

I agreed with him the following steps:

1. I would contact Dame Elish to advise her that the referral is getting underway and to establish a) whether she is now free from the previous conflict of interest; and b) if she is free, whether she would be available to undertake the referral jointly with Mr Hamilton.
2. I would send him (and Dame Elish if she has a role) the previous remit and background material. He may wish to offer thoughts on this.
3. He and I (and Dame Elish if involved) would then discuss how the conduct of the referral might proceed in light of the current lockdown limitations, noting that it is very likely that key figures whom he might wish to interview will have very restricted availability for some time to come. (As you know,

Mr Hamilton [redacted] where they are experiencing more or less the same restrictions as we have here.)

4. When the remit and methods of working have been settled, we would provide secretarial support to assist with the location of documents and the setting up of interviews.

I will keep you advised of progress.

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
[redacted]

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**From:** [redacted]@gov.scot> **On Behalf Of** Deputy First Minister and Cabinet Secretary for Education and Skills
**Sent:** 03 June 2020 10:13
**To:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>; Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Fowler K (Kenneth) <Kenneth.Fowler@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
**Subject:** RE: OFF-SEN: FFM complaints-related workstreams

Hi Kenneth,

The DFM is grateful for this submission and notes its contents.

He would be grateful if steps could now be taken to commence the internal review in the Scottish Government on the remit he previously agreed.

The DFM would also be grateful if steps were taken by the independent reviewer to proceed with the self-referral inquiry by the First Minister under the Ministerial Code.

Mr Swinney would like to stress that these steps must be taken cognisant of the fact that the First Minister, Ministers and senior officials relevant to these inquiries are entirely focused - and will continue to be so for some time to come - on dealing with the COVID pandemic. That task will naturally limit the amount of time that can be allocated to these tasks.

Many thanks

[redacted]

[redacted] | Interim Private Secretary to John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education and Skills | The Scottish Government | Web: www.gov.scot |Tel: [redacted] Email: DFMCSE@gov.scot

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*Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot*

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**From:** Hogg KJ (Kenneth) <Kenneth.Hogg@gov.scot>
**Sent:** 27 May 2020 14:11
**To:** Deputy First Minister and Cabinet Secretary for Education and Skills <DFMCSE@gov.scot>
**Cc:** Lord Advocate <LordAdvocate@gov.scot>; Solicitor General <SolicitorGeneral@gov.scot>; Macniven R (Ruaraidh) <Ruaraidh.Macniven@gov.scot>; Director Communications, Ministerial Support & Facilities <DirectorCMSF@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; Fraser L (Lesley) <Lesley.Fraser@gov.scot>; DG Organisational Development & Operations <DGODO@gov.scot>; Johnston P (Paul) <Paul.Johnston@gov.scot>; DG Education, Communities & Justice <DGECJ@gov.scot>; Richards N (Nicola) <Nicola.Richards@gov.scot>; Hynd JS (James) <James.Hynd@gov.scot>; Fowler K (Kenneth) <Kenneth.Fowler@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; Troup C (Colin) (Dr) <Colin.Troup@gov.scot>; Legal Secretariat to the Lord Advocate <DLPCEALSLA@gov.scot>; McAllister C (Colin) <Colin.McAllister@gov.scot>
**Subject:** OFF-SEN: FFM complaints-related workstreams

I attach a submission for DFM, plus 3 other supporting documents.

Kenneth

Kenneth Hogg
Director, Organisational Continuity

[redacted]

**From:** [redacted]
**Sent:** 29 October 2020 14:15
**To:** Alex Salmond [redacted]
**Subject:** RE: Mr James Hamilton

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton, responding to the questions raised in your emails of 6th and 17th of October. I apologise for the delay in acknowledging your initial email- this was an error on my part.

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 19 October 2020 12:14
**To:** 'Alex Salmond'
**Subject:** RE: Mr James Hamilton

Dear Mr Salmond,

I am emailing to confirm that Mr Hamilton has received your emails of the 8th October and 17th October, and is considering the questions you have raised in both pieces of correspondence. Mr Hamilton will respond to your questions shortly.

Best wishes,

[redacted]

[redacted] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [redacted]

**From:** Alex Salmond <[redacted]>
**Sent:** 17 October 2020 12:34
**To:** [redacted]
**Subject:** Re: Mr James Hamilton

Mr James Hamilton
Independent Adviser on The Scottish Ministerial Code.

17th October 2020

Dear Mr Hamilton

Further to my letter of 8th October I await an answer to the questions posed or an acknowledgement of the email. Could you ask your staff to provide this?

I am now in receipt of several press queries on whether I have been in communication with you. My practice with the Parliamentary Committee has been to "no comment" but draw attention to the publication of correspondence. However, I doubt that it is your intention to publish correspondence and therefore I would wish your guidance on how to reply to these questions.

On which subject I enclose a letter which my lawyers sent to the Parliamentary Committee on 14th October, which is clearly relevant to your remit, however it be defined.

Yours sincerely

The Rt Hon Alex Salmond

[redacted]

[redacted]

On 6 Oct 2020, at 22:28, Alex Salmond <[redacted]> wrote:

Mr James Hamilton
Independent Adviser on the Scottish Ministerial Code

6th October 2020

Dear Mr Hamilton,

Thank you for your letter of 8th September.

I do indeed have information which will be of assistance to your enquiries and am happy to assist you if I can.

However I would like to accept your offer of clarification on your request and ask first for answers to the following points;

Firstly, I am prepared to represent myself in presenting you with evidence. I am a private individual and simply cannot afford to hire further legal representation as my lawyers are fully occupied dealing with the Scottish Parliamentary Inquiry. Vast sums of public funds have already been expended by Scottish Government officials in legal representation in this process. I am also informed that other witnesses are relying on their political party to finance their legal representation. I will represent myself and am therefore in no position to accept responsibility as to whether my submissions are in line with legal requirements as you suggest in your letter. That will require to be your responsibility and I will be grateful if you could now confirm this.

Secondly, on a related point, the remit drawn by the Deputy First Minister refers to the anonymity orders drawn up by the “court in the criminal proceedings”. I would draw your attention to the rather more relevant ruling of Lord Woolman in the civil proceedings of 8th October 2018. This was sought by my counsel and as I recall the Scottish Government were not even represented by counsel at that hearing. Also relevant would be the interlocutor of Lord Pentland of January 8th 2019 after concession of the Judicial Review, where certain Scottish Government documents were reduced by the Court as the product of an unlawful process. For ease of reference I have copied you both of these court interlocutors. Please confirm that you shall not be relying on, or accepting into evidence, said unlawful documents as any part of your enquiries.

You may also be aware that my solicitors have been informed by letter from the Crown Office that if they present or even describe to the Parliamentary Committee information gained in disclosure in the criminal proceedings they will be liable to prosecution. I am happy to provide you with this letter if you wish. Please confirm if this threat applies to your enquiry because there are indeed relevant documents under this restriction. However, given that much of this documentation was obtained by Crown search warrant from the Scottish Government it would be open for the

Government to supply you with it. Your difficulty is that you do not know what it is and I am currently debarred from informing you.

Thirdly, I understand from the Parliamentary Committee hearings in answer to a question from Ms Jackie Baillie that the civil servant who has been allocated responsibility for leading support for your enquiry is Mr James Hynd. However Mr Hynd was himself deeply involved in the Scottish Government's unlawful complaints procedure. Indeed he claimed under oath at both the Commission which was required as part of the Judicial Review in December 2018 and in front of the Parliamentary Committee last month to be the original author of the policy. I do not dispute Mr Hynd's personal integrity although I note he was forced to write to the Committee to correct an impression he had unwittingly given about me in his evidence. However, please clarify his status and position in your enquiry given his prior involvement in this matter.

Fourthly, the remit given to your investigation by the Deputy First Minister lays a surprising stress on whether she interfered in the Scottish Government investigation. It might even be suspected that this remit has been set up as a straw man to knock down. There is no general bar on Ministers intervening in a civil service process of which I am aware and indeed there are occasions when Ministers are actually required by the code to intervene to correct civil service behaviour.

What I wish to know is whether matters which, by contrast, are specified in the Ministerial code such as the primary responsibility of not misleading Parliament (contrary to 1.3 (c) of the code), such as the failure to act on legal advice suggesting the Government was at risk of behaving unlawful (contrary to 2.30 of the code), and such as the Ministerial failure to ensure civil servants gave truthful information to parliament (contrary to 1.3 (e) of the code) will have at least equal status in your deliberations or are you confined to the political remit which you have been set? If your enquiry has been confined by Ministers then please tell me if you have the authority to expand that remit unilaterally? If not, will you seek the authority of those in the Scottish Government who set the remit to expand it into these, and other, areas?

Finally since the Parliamentary Committee has demanded full transparency and expressed an interest in your deliberations I have copied them into this email.

As I am answering your enquires personally please direct all future correspondence to me directly at [redacted]

Yours faithfully

The Rt Hon Alex Salmond

Sent from my iPad

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**James Hamilton**
**Independent Adviser on the Scottish Ministerial Code**

c/o E: [redacted]@gov.scot

Alex Salmond,
By email [redacted]

___

29 October 2020

Dear Mr. Salmond,

Thank you for your emails of 6th October and 17th October asking various clarification questions about the work I am undertaking. I apologize for the delay in acknowledging your first email, and for the delay in providing a substantive response. Your correspondence raised a number of significant questions which I wanted to give full consideration to.

Regarding the first point, I note what you say about representing yourself. I will, of course, have no control over what you put in your submissions. I can confirm that I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

In relation to your second point, thank you for drawing my attention to the two court interlocutors attached to your letter. I will have regard to these when conducting my investigation. I would indeed appreciate receiving a copy of the letter from the Crown Office which you refer to. Again, as I have just stated, I will do my best to ensure that nothing in my report will be in breach of any applicable court orders.

On the third point, as you will know, James Hynd's role as head of Cabinet Secretariat includes supporting Ministers in matters relating to the Ministerial Code. On that basis, Mr. Hynd supported the Deputy First Minister in establishing the referral I have been asked to undertake.

Mr. Hynd has stepped away from the process and [redacted] has been appointed as Head of Secretariat Support to support my work as I require. I can

confirm therefore that James Hynd will not play any role in relation to the day to day conduct of the inquiry or in the finalisation of my report and any recommendations that I may make.

I note your comment concerning my remit. As you are aware the remit of the referral was set out by the Deputy First Minister in a PQ response to the Scottish Parliament made on 6 August 2020. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister's failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances.

In relation to the issues raised in your second email, I can confirm that any response to my enquiries relating to the factual matters I am asked to enquire into will be used in the compilation of the report. I have not yet decided fully on the format of the report but any reply to such enquiries will be liable to be published with the exception of material which cannot be made public as a result of court orders or for other legal reasons.

I have set out various matters relevant to your questions in my recent correspondence with the Parliamentary committee.

https://www.parliament.scot/HarassmentComplaintsCommittee/James_Hamilton.pdf

With regard to incidental queries it would not be my intention to publish them as a matter of routine and it would be my preferred option to make no comment pending the completion of my enquiries. However, I am concerned not to favour or be perceived to favour any particular interested party in the matter and therefore if I were asked questions concerning contacts between interested parties and me I might well think it proper or necessary in the public interest and in particular in the interests of transparency to give a full reply.

For that reason I cannot exclude the possibility that any correspondence between us might at some stage be published.

I hope this answers your questions.

As you know, I am currently in the process of considering written submissions and what additional information I may need to gather. It would be helpful if you were able to indicate when you would be able to offer a written submission.

James Hamilton

**From:** [redacted]
**Sent:** 29 October 2020 11:01
**To:** James Hamilton [redacted]
**Subject:** [redacted]

Hi James,

Many thanks, I will add the date of the statement.

Happy to discuss. Would 11.30 be ok for you?

Best wishes,

[redacted]

**From:** James Hamilton
**Sent:** 29 October 2020 10:40
**To:** [redacted]
**Subject:** [redacted]

Dear [redacted]

I have gone through the draft reply as amended by you and have added one further sentence [redacted]. If you can expand this further to add the date of the deputy First Minister's statement it would be helpful. I attach my amended draft. It might be useful if we have a brief word on the phone before we sign off. I am available from now until 12.noon. Thereafter I am not free until after 3.00pm.

[redacted] I think it would be prudent to assume that anything I write in correspondence will end up in the media so I do not propose to make any requests of Mr. Salmond in this regard.

Best wishes

James

On Wed, 28 Oct 2020 at 18:33, James Hamilton [redacted] wrote:
I am inclined to leave it until the morning now! Better to read it again when my brain is fresher.
J

On Wed 28 Oct 2020 at 18:24, [redacted]@gov.scot> wrote:
I've now had a chance to consider the points in detail. I think we could add a short line on the interlocutors [redacted]
I have added something in the attached.

**From:** [redacted]
**Sent:** 28 October 2020 17:56
**To:** 'James Hamilton' [redacted]
**Subject:** FW: [redacted]
**Importance:** High

From Mr Ross. Just reading it now.

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 28 October 2020 17:55
**To:** [redacted]@gov.scot>
**Subject:** [redacted]
**Importance:** High

Dear [redacted]

[redacted]

[redacted]

[redacted]

Regards

Douglas

**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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Constitution and Cabinet Directorate
Cabinet, Parliament and Governance Division

Scottish Government
Riaghaltas na h-Alba
gov.scot

T: [redacted]
E: james.hynd@gov.scot

James Hamilton
[redacted]

30 January 2019

Dear Mr Hamilton

**SCOTTISH MINISTERIAL CODE: REFERRAL**

I am writing in relation to the First Minister's decision to refer herself to the Independent Advisers on the Ministerial Code.

As you are aware, a key consideration in taking the referral forward has been to ensure that there would be no risk of prejudice to the ongoing police investigation. Last week's developments, in terms of an arrest and charges, have made that consideration particularly acute. The laying of those charges brings into effect the protections under the Contempt of Court Act 1981.

The Crown Agent has not provided us with legal advice on the matter. However, nor could he provide us with any reassuarance that there would be no risk of prejudice to the fairness of the criminal investigation were the Independent Advisers to proceed with an investigation in terms of the draft remit I previously sent you, and which I attach again to this letter.

In light of that view, we have considered whether it might be possible to revise the remit to minimise any possible risk to the criminal investigation. We have concluded that reducing the scope of the remit would unduly restrict the ability of the Independent Advisers to investigate fully the questions of conduct that have been raised. Neither could we be sure that even a restricted remit would not have the potential to interfere with the criminal proceedings in some way. We therefore need to balance the public interest in proceeding with a referral that was broad enough to address fully the concerns that have been raised, with that of ensuring that there is no risk of prejudice to the fairness of the criminal investigation.

To inform that consideration, it would be helpful to have your views on whether you think you would be able proceed on the basis of the remit as set out while the criminal investigation was under way, or if another course of action, such as deferring the Ministerial Code referral

while there are active criminal proceedings, would be more appropriate in these circumstances.

Please let me know if it would be helpful to discuss these issues further

Yours Sincerely

**James Hynd**



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# FW: Scottish Ministerial Code

**From:** [redacted]@gov.scot>
**To:** James Hamilton <[redacted]>
**Date:** Mon, 30 Nov 2020 21:40:38 +0000

Hi James,

We've had the following response from Mr Aberdein, seeking further clarification of the process surrounding the preparation of the report.

I think it would be relatively straightforward to provide each participant with the sections of the report that refer to them or their written submissions (Maxwellisation), but any commitments about publication of any of the written submissions could be more challenging.

Best wishes,

[redacted]

**From:** Geoff Aberdein [redacted]
**Sent:** 26 November 2020 12:50
**To:** [redacted]@gov.scot>
**Subject:** Re: Scottish Ministerial Code

[redacted]

Apologies for the length of time it has taken me to respond.

My intention in sending the full submission was to provide helpful and broader context for Mr Hamilton and to assist his enquiries as best as I could.

My preference would be for the information held within simply to be referred to and not included in any report. However, if Mr Hamilton intends to include any of the information I have provided, I would appreciate an explanation why as well as the courtesy of being informed which specific material is intended for use and when it will be published.

I am a private citizen simply doing my civic duty and this whole situation, despite the fact I have done nothing wrong, has caused me significant personal and professional difficulty. I would appreciate Mr Hamilton's view as to whether my name has to be mentioned at all in any report?

Finally, I note in your email you confirm it is for Mr Hamilton to ensure that the report is consistent with the relevant court orders. As you will appreciate, I'm not a legal professional and cannot offer guidance in this regard.

Best wishes

Geoff

Sent from my iPad

On 10 Nov 2020, at 12:30, [redacted]@gov.scot wrote:

Dear Geoff,

Thank you for your email. Further to my previous email, I can confirm that Mr Hamilton has received your submission.

Mr Hamilton has sought information from witnesses for the purposes of fulfilling his task of reporting on the questions referred to him by the First Minister.

He will therefore be preparing a report for publication, and relevant information included in submissions will be included in or referred to in that report as appropriate. Mr Hamilton will also seek to ensure that the report is consistent with the relevant court orders on these matters.

If you are in a position to identify any particular material which you consider ought to be kept confidential it would be helpful for you to do so.

Please let me know if you need any more information.

Best wishes,

[redacted]

[redacted] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or o[redacted]

**From:** [redacted]
**Sent:** 30 October 2020 09:01
**To:** 'Geoff Aberdein' [redacted]
**Subject:** RE: Scottish Ministerial Code

Dear Geoff,

I am emailing to confirm that this email has been received. In terms of your question about how the submission will be used, Mr Hamilton will prepare a more detailed response setting out how he will use the written submissions in the preparation of his report, and I will send that over in due course.

Best wishes,

[redacted]

**From:** Geoff Aberdein [redacted]
**Sent:** 28 October 2020 10:30
**To:** [redacted]@gov.scot>
**Subject:** Re: Scottish Ministerial Code

[redacted]

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

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**From:** James Hamilton <[redacted]>
**Sent:** 30 July 2020 11:01
**To:** Hynd JS (James) <James.Hynd@gov.scot>
**Subject:** Re: Ministerial Code Referral

Dear Mr Hynd

The draft remit appears to me to be clear and in order.

It might be useful to have a brief phone conversation just to be clear about everything. [redacted] Perhaps a call at about 5.00 pm if that is not too late?

Best wishes

James Hamilton

On Wed, 29 Jul 2020 at 18:36, <James.Hynd@gov.scot> wrote:
Dear Mr Hamilton

Please find attached a letter and remit for your final approval.

As I set out in the letter, I am working on putting in place admin and legal support for you.

Let me know if a call would be useful.

Best wishes

James

James Hynd
Head of Cabinet, Parliament and Governance Division
Room 4N:03
St Andrew's House
Edinburgh
Internal ext [redacted]

**From:** James Hamilton <[redacted]>
**Sent:** 25 July 2020 13:13
**To:** Hynd JS (James) <James.Hynd@gov.scot>
**Subject:** Ministerial Code Referral

Dear Mr Hynd

Since we last spoke I have given some thought to how to proceed. I have come to the conclusion that the best course of action is to press ahead now with the task I have accepted notwithstanding the parliamentary committee's intention to issue its own report.. It is quite true that the scope of the parliamentary inquiry is broad and expressly includes the matter which I have been asked to report on under the referral procedure provided for in the Ministerial Code. However, the referral procedure is intended to produce an independent expert assessment whereas the parliamentary inquiry is likely to produce a more political result. Having undertaken the task I would be loathe to walk away from it notwithstanding the obvious difficulties.

At this stage, therefore, it is necessary to settle the terms of the remit. I was content with the draft provided in your letter and email of 30 January and I suggest that it be formally adopted by the First Minister.

It will be necessary to appoint somebody to act as secretary/ administrator /organiser to the referral procedure. This will need to be done as soon as possible as I would wish to respond to the request from the Parliament preferably before their proposed deadline of 4 August which is now just over a week away. At the very least the letter needs to be acknowledged before that date.

I would like to see some of the recent opinions given under the referral procedure to get some sense of the "house style". Are they available on a website? I assume Ms Fabiani has correctly stated the position that it has been the practice to annex evidence given to previous referrals to the independent panellist's report when issued. If so I would propose if possible to follow this practice and would now so inform the parliamentary committee. I would also propose to point out to the committee that I do not have any evidence at present concerning the matters they are asked to inquire into and will not have any such evidence other than what will be made publicly available in my report. I will suggest that in these circumstances it will not be appropriate that I should be asked to give evidence before the committee. I think this reply should be issued through the secretary to the referral as I do not think I should respond directly to the parliamentary committee using my personal email.

Finally, having had the opportunity to discuss the procedures adopted in previous referrals with Dame Elish Angiolini she has informed me that it has been a usual practice to appoint a local legal practitioner to assist the independent panel member. I would be very content to follow this practice. It is always very helpful to have somebody to discuss problems and ideas with and to assist with drafting, particularly in my situation as an outsider which while it

confers the advantage of independence has the drawback that one unfamiliar with the local procedures and culture may miss important nuances.

Yours sincerely

James Hamilton

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**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 30 October 2020 09:38
**To:** [redacted]@gov.scot>
**Subject:** RE: James Hamilton- Ministerial Code referral

[redacted]

That's fine – no apology required.

I couldn't find my outgoing e-mail (I've now located it misfiled in another folder) and was temporarily concerned that I had somehow deleted it instead of sending it.

Regards

Douglas

**From:** [redacted]@gov.scot
**Sent:** 29 October 2020 21:09
**To:** Douglas Ross
**Subject:** RE: James Hamilton- Ministerial Code referral

Dear Douglas,

Apologies, I had drafted an email last night to acknowledge receipt of your advice and had neglected to send it. [redacted].

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 29 October 2020 20:00
**To:** [redacted]@gov.scot>
**Subject:** James Hamilton- Ministerial Code referral

Dear [redacted]

Can I just confirm that you received my e-mail of yesterday advising on the various issues raised?

Regards

Douglas

**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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# RE: Scottish Ministerial Code

**From:** [redacted] <[redacted]@gov.scot>
**To:** Geoff Aberdein <[redacted]>
**Date:** Fri, 30 Oct 2020 09:01:26 +0000

Dear Geoff,

I am emailing to confirm that this email has been received. In terms of your question about how the submission will be used, Mr Hamilton will prepare a more detailed response setting out how he will use the written submissions in the preparation of his report, and I will send that over in due course.

Best wishes,

[redacted]

---

**From:** Geoff Aberdein
**Sent:** 28 October 2020 10:30
**To:** [redacted]
**Subject:** Re: Scottish Ministerial Code

[redacted],

Please find attached my submission to the Committee on the Scottish Government's Handling of Harassment Complaints.

I believe the content of this submission sufficiently answers the questions posed to me by Mr Hamilton in his letter of 8 September. However, if Mr Hamilton requires further information, please invite him to write to me and I will endeavour to assist if I can.

I would appreciate confirmation of receipt of this email as well as confirmation that the content of this submission will not be circulated further and used only for the purposes of assisting Mr Hamilton with his enquires under the auspices of the First Minister's self-referral under the Scottish Ministerial Code.

Yours sincerely

Geoff Aberdein

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**From:** [redacted]
**Sent:** 30 November 2020 16:53
**To:** 'Douglas Ross' <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Turns out my filing system is less dreadful than I thought. [redacted]

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 30 November 2020 16:49
**To:** 'Douglas Ross' <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

[redacted]

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 30 November 2020 15:52
**To:** [redacted]
**Subject:** RE: Correspondence- for comment

[redacted]

I'm starting to look at this now. There are a few documents which I don't think I have seen which may be relevant to my response:

[redacted]

If you were able to send these to me, I'd be grateful.

Happy to discuss any matters arising.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: 07739 639257
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]
**Sent:** 27 November 2020 17:52
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Many thanks, I can confirm that there have been no further developments on this since the 24th November and that it would be really helpful to have comments early next week.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 27 November 2020 16:18

**To:** [redacted]
**Subject:** RE: Correspondence- for comment

[redacted]

No apology required.

Can I just check that, now that the Lockerbie appeal is over, you would still like me to provide comments and that there have been no developments since your e-mail of 24 November?

If so, I will try to provide comments in the early part of next week.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: 07739 639257
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]
**Sent:** 25 November 2020 13:53
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Thanks for letting me know, and apologies as I should have remembered that you had other commitments at the end of November.

I will let Mr Hamilton know.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 25 November 2020 11:10
**To:** [redacted]
**Subject:** Re: Correspondence- for comment

Dear [redacted]

I'm well thanks but am one of the Crown counsel in the Lockerbie appeal which began yesterday and ends on Friday, so unable to attend to other matters this week.

Assuming the appeal ends on time - which I think it will - I can put this matter to the top of my agenda next week.

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, [redacted] wrote:

Dear Douglas,

I hope you are well.

[redacted]

Happy to discuss.

Best wishes,

[redacted]

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**From:** [redacted]
**Sent:** 30 November 2020 17:46
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Apologies, that's me not reading things carefully enough. [redacted]

[redacted]

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 30 November 2020 17:23
**To:** [redacted]@gov.scot>
**Subject:** RE: Correspondence- for comment

[redacted]

Many thanks for your prompt reply. A couple of points arising: [redacted]

Many thanks.

Douglas

**From:** [redacted]@gov.scot>
**Sent:** 30 November 2020 16:59
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Turns out my filing system is less dreadful than I thought. [redacted]

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 30 November 2020 16:49
**To:** 'Douglas Ross' <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

No problem at all. [redacted]

[redacted]

[redacted]

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 30 November 2020 15:52
**To:** [redacted]@gov.scot>
**Subject:** RE: Correspondence- for comment

[redacted]

I'm starting to look at this now. There are a few documents which I don't think I have seen [redacted]ch may be relevant to my response:

[redacted]

If you were able to send these to me, I'd be grateful.

Happy to discuss any matters arising.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 27 November 2020 17:52
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Many thanks, I can confirm that there have been no further developments on this since the 24th November and that it would be really helpful to have comments early next week.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 27 November 2020 16:18
**To:** [redacted]@gov.scot>
**Subject:** RE: Correspondence- for comment

[redacted]

No apology required.

Can I just check that, now that the Lockerbie appeal is over, you would still like me to provide comments and that there have been no developments since your e-mail of 24 November?

If so, I will try to provide comments in the early part of next week.

Regards

Douglas
**Douglas Ross QC** Ampersand Advocates

phone: [redacted]
web: www.ampersandadvocates.com

Clerk: Alan Moffat
Deputy clerks: Jennifer Dunn, Sheena Hume, Shawn McArthur & Kathryn Ferguson

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**From:** [redacted]@gov.scot>
**Sent:** 25 November 2020 13:53
**To:** Douglas Ross <douglas.ross@advocates.org.uk>
**Subject:** RE: Correspondence- for comment

Hi Douglas,

Thanks for letting me know, and apologies as I should have remembered that you had other commitments at the end of November.

I will let Mr Hamilton know.

Best wishes,

[redacted]

**From:** Douglas Ross <douglas.ross@advocates.org.uk>
**Sent:** 25 November 2020 11:10
**To:** [redacted]@gov.scot>
**Subject:** Re: Correspondence- for comment

Dear [redacted]

I'm well thanks but am one of the Crown counsel in the Lockerbie appeal which began yesterday and ends on Friday, so unable to attend to other matters this week.

Assuming the appeal ends on time - which I think it will - I can put this matter to the top of my agenda next week.

Regards

Douglas

Sent from my iPad

On 24 Nov 2020, at 20:44, '[redacted]@gov.scot> wrote:

Dear Douglas,

I hope you are well.

[redacted]

Happy to discuss.

Best wishes,

[redacted]

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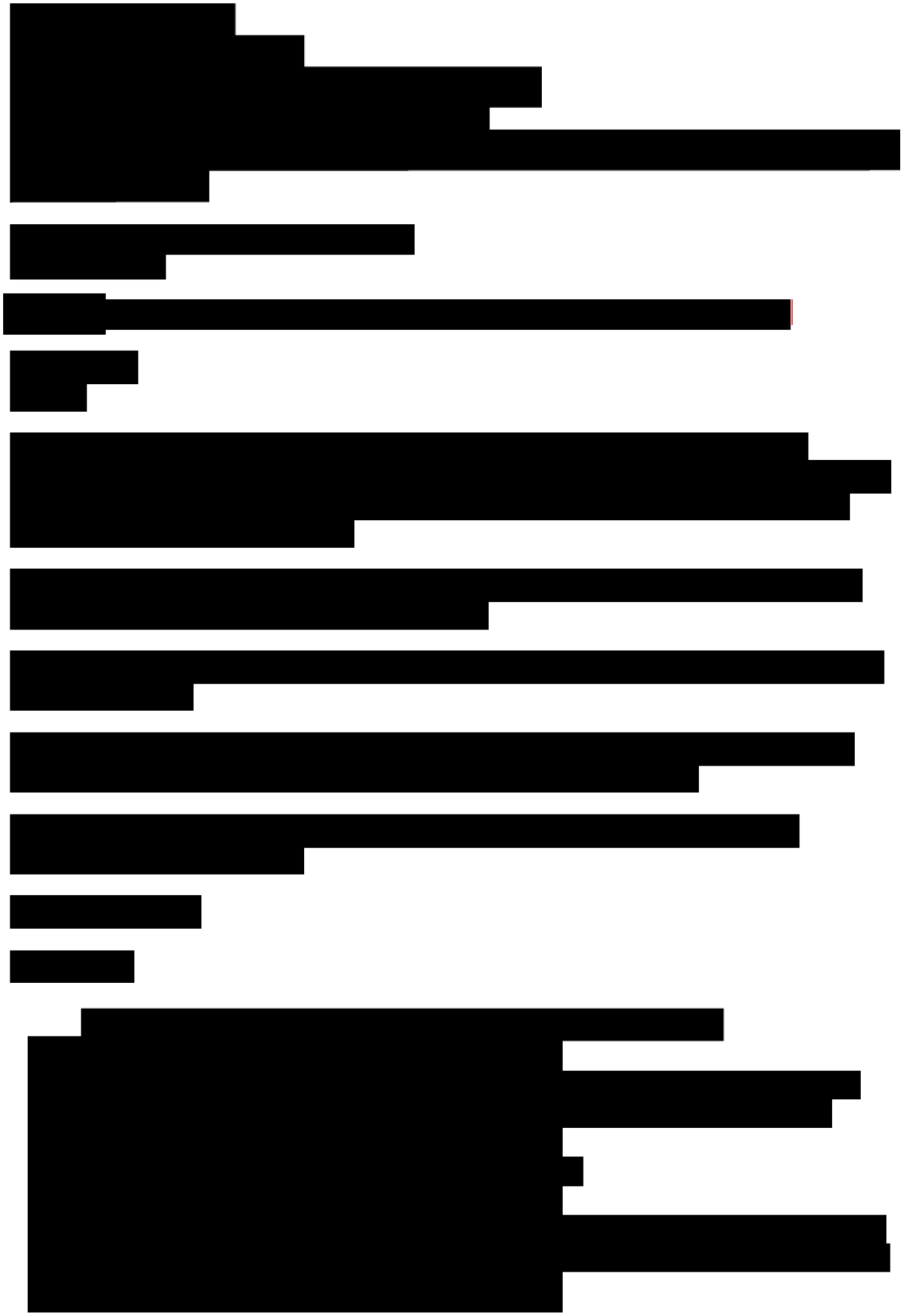
[redacted]

[redacted]

[redacted]

[redacted]



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# Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton

**From:** Duncan Hamilton <[redacted]>
**To:** [redacted]@gov.scot>
**Date:** Mon, 30 Nov 2020 10:54:01 +0000
**Attachments:** image001.png (8.01 kB)

Many thanks [redacted]

Best wishes

Duncan

Duncan Hamilton
Advocate
[redacted]

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t[redacted]
www.amadvocates.co.uk

> On 30 Nov 2020, at 10:31, [redacted]@gov.scot wrote:
>
> Dear Duncan,
>
> Many thanks for your swift response, which I had passed on to Mr Hamilton.
>
> Mr Hamilton understands your position on this matter and is grateful for your consideration of his request.
>
> Best wishes,
>
> [redacted]
>
> **From:** Duncan Hamilton
> **Sent:** 25 November 2020 14:46
> **To:** [redacted]
> **Subject:** Re: Personal- Ministerial Code Referral- Correspondence from James Hamilton
>
> Dear [redacted]
>
> Many thanks for this letter which I have considered carefully.

I regret that my professional duties and obligations do not permit me to assist in providing the information sought.

I trust that Mr Hamilton will understand that position.

Yours faithfully

Duncan Hamilton

Duncan Hamilton
Advocate
[redacted]

Arnot Manderson Advocates, Parliament House, Edinburgh, EH1 1RF t[redacted]
[redacted] www.amadvocates.co.uk

---

**From:** "[redacted]@gov.scot" <[redacted]@gov.scot>
**Date:** Wednesday, 25 November 2020 at 09:21
**To:** DUNCAN HOME <[redacted]
**Subject:** Personal- Ministerial Code Referral- Correspondence from James Hamilton

Dear Duncan Hamilton,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid restrictions do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[redacted]

[redacted] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [redacted]

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**From:** [redacted]
**Sent:** 30 November 2020 10:34
**To:** James Hamilton [redacted]
**Subject:** FW: Personal- correspondence from James Hamilton

Hi James,

Please see attached response from Kevin Pringle.

Best wishes,

[redacted]

**From:** Kevin Pringle
**Sent:** 27 November 2020 11:59
**To:** [redacted]
**Subject:** Re: Personal- correspondence from James Hamilton

Dear Mr Hamilton

EMAILED VIA [redacted]

Thank you for your letter of 25 November.

I can confirm that I took part in the telephone conversation described by Geoff Aberdein. [redacted] Mr Aberdein was seeking advice as to whether to inform Mr Salmond, and it was agreed that it was fair he should do so. [redacted] He did not have detailed knowledge of the allegations that he was able to share, which I learned of subsequently from Mr Salmond himself, as well as from information as it entered the public domain.

I hope that this is of assistance.

Best wishes

Kevin Pringle

**From:** [redacted]@gov.scot" [redacted]@gov.scot>
**Date:** Wednesday, 25 November 2020 15:14
**To:** Kevin Pringle [redacted]
**Subject:** Personal- correspondence from James Hamilton

Dear Kevin Pringle,

Please see attached correspondence from James Hamilton, independent advisor on the Ministerial Code.

In order to ensure that the current Covid restrictions do not delay this correspondence, it has been sent by email in the first instance. A duplicate hard copy will also be sent by post.

Best wishes,

[redacted]

[redacted] | Secretariat to the Independent Advisor under the Ministerial Code | Please contact me on Skype or on [redacted]

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**From:** [redacted]
**Sent:** 30 December 2020 16:47
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** RE: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Hi [redacted]

Many thanks for paying the invoice. Our details for reclaiming the costs are:

Cost Centre: [redacted]
Programme Code: [redacted]

Please could you forward me the completed journal when it has been processed so that I can file accordingly.

Many thanks, [redacted]
[redacted] **I Scottish Government I Cabinet, Parliament and Governance Division** I
**Tel:** [redacted]

**From:** [redacted]
**Sent:** 30 December 2020 16:36
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** RE: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Hi [redacted]

Thanks for forwarding, and apologies for the way this has made its way to you. I had asked for invoices to be sent directly to me for me to arrange payment, so I will remind the clerks of this.

I have copied in [redacted] who is handling this for our division, and should be able to advise who can help with this.

To give a bit of context in case it is helpful- this work relates to the Ministerial code investigation being undertaken by James Hamilton, independent advisor on the ministerial code. As this work is independent of government, suitable external legal support for Mr Hamilton was arranged, and DFM and the LA agreed to this being sourced.

Happy to discuss.

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 30 December 2020 12:01
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

[redacted]

The attached invoice was sent to SGLD Finance and has been paid, Shirley Ferguson has explained that this is for your area to pay. If you would let me know who the BCLO is your area and I will arrange for the costs to be recovered

Regards,

[redacted]

[redacted]
SG Legal Directorate : Area 1G North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: [redacted]

E-mail [redacted]

I am working from home and can be contacted by email and Skype

**From:** Ferguson SE (Shirley) <Shirley.Ferguson@gov.scot>
**Sent:** 30 December 2020 11:44
**To:** [redacted]
**Cc:** [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

[redacted]
Just to confirm that we have checked and the fee note should indeed be referred to [redacted] for payment.
Shirley

**From:** [redacted]
**Sent:** 30 December 2020 10:42
**To:** Ferguson SE (Shirley) <Shirley.Ferguson@gov.scot>
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Shirley,
To see the email below from [redacted]. I have forwarded it on to James Hamilton in Local Government SGLD but he is on leave until 5th Jan and [redacted] has replied in his absence saying this is not something he is aware of. Do you know anything about this? Failing which I think we might have to ask Douglas Ross 's Clerk.

Thanks,
[redacted]

[redacted]
Solicitor / Litigation Division / Scottish Government Legal Directorate
G-A North / Victoria Quay/ Edinburgh EH6 6QQ
M [redacted]
**Please contact me by email as I will be working from home** ( My normal working hours are 8.30a.m to 1.30p.m Monday to Friday)
This email is from the Scottish Government Legal Directorate . To the extent that it may contain legal advice, it is legally privileged and therefore may be exempt from disclosure under the Freedom of Information (Scotland) Act 2002 or the Environmental Information ( Scotland) Regulations 2004.

**From:** [redacted] >
**Sent:** 30 December 2020 10:12
**To:** [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

[redacted]

Hope you are well and had a good Christmas?

I am covering for festive holidays and was not sure [redacted] still covered Litigation cases ?

Due to the festive holiday period and to keep in line with 10 day payment this invoice has been passed for payment. If you would approve as normal and return to SGLD finance on your return from leave.

Regards,

[redacted]

[redacted]
SG Legal Directorate : Area 1G North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: [redacted]

E-mail: [redacted]

I am working from home and can be contacted by email and Skype

**From:** Fee Rendering [redacted]
**Sent:** 26 December 2020 19:07
**To:** SGLD Finance unit [redacted]
**Cc:** Supplier Prompt Payment [redacted]
**Subject:** FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Dear Sir/Madam,

Please find attached a fee note for work undertaken by Douglas Ross Q.C. relating to:

**Case Title:** Ministerial Code Referral
**Case ID:** 203976
**Client:** Mr James Hamilton
**Case Type:** CIVIL NON LEGAL AID
**Your ref:**

Kind regards,
Faculty Services Ltd

For further detail of payment terms please refer to The Scheme for Accounting for and Recovery of Counsels Fees which can be found here

Fee enquiries to: [redacted]
Payment enquiries to: [redacted]
Credit Control enquiries to: [redacted]

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**From:** [redacted]
**Sent:** 30 December 2020 12:01
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

[redacted]

The attached invoice was sent to SGLD Finance and has been paid, Shirley Ferguson has explained that this is for your area to pay. If you would let me know who the BCLO is your area and I will arrange for the costs to be recovered

Regards,

[redacted]

[redacted]
SG Legal Directorate : Area 1G North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: [redacted]

E-mail [redacted]

I am working from home and can be contacted by email and Skype

**From:** Ferguson SE (Shirley) <Shirley.Ferguson@gov.scot>
**Sent:** 30 December 2020 11:44
**To:** [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

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Thanks,
[redacted]

[redacted]**ck**
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G-A North / Victoria Quay/ Edinburgh EH6 6QQ
M [redacted]
**Please contact me by email as I will be working from home** ( My normal working hours are 8.30a.m to 1.30p.m Monday to Friday)
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[redacted]

E [redacted]
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Tel: [redacted]

E-mail [redacted]

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**Subject:** FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

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**Case Type:** CIVIL NON LEGAL AID
**Your ref:**

Kind regards,
Faculty Services Ltd

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w: www.advocates.org.uk
e: [redacted]
t: 0131 260 5736


## FEE NOTIFICATION
(Proposed Fee)

DX: 557000ED20
THE SCOTTISH GOVERNMENT
SGLD FINANCE UNIT
AREA GB-06
VICTORIA QUAY
EDINBURGH

| | |
|---|---|
| Date of Issue | 26/12/2020 |
| Case ID | 203976 |
| Fee Note No. | INV/DR-R27X164 |
| P/O Number | |
| | SG97 |
| | 8676 Page |
| | 1 of 1 |

| | | | |
|---|---|---|---|
| Case | Ministerial Code Referral | | |
| Client | Mr James Hamilton | Case Type | CIVIL NON LEGAL AID |
| Payment Deferred | No | Deferment Period | No Deferment |
| Contact Name | [redacted] | Contact Ref | |
| Advocate | Douglas Ross Q.C. | Vat Reg No | 716 8060 37 |

| Date | Description | Amount | Vat% | Vat |
|---|---|---|---|---|
| 01/12/2020 | Reviewing correspondence; researching parliamentary material online; providing advice in form of detailed e-mail. Time engaged - 6 hours. | £1,500.00 | 20.0% | £300.00 |
| 03/12/2020 | Reading and considering further documents; discussing matters arising by telephone with Mr Hamilton. Time engaged - 30 minutes. | £125.00 | 20.0% | £25.00 |

**VAT SUMMARY**
20.0% (FEE) Amount: £1,625.00, VAT: £325.00

| | |
|---|---|
| **Total Fees** | **£1,625.00** |
| **Total VAT** | **£325.00** |
| **Total Due** | **£1,950.00** |

[Tear-Off]

**PAYMENT REMITTANCE** - [Payment will be accepted by Cheque, Bank Transfer or Card (excl. Amex)]

**Please send payment to:**

FACULTY SERVICES LIMITED
Advocates Library
Parliament House
Edinburgh
EH1 1RF
DX No: ED549302

**BACS payment to:**

[redacted]

**Fee Note No.:** INV/DR-R27X164

**Case ID: 203976**

| | |
|---|---|
| Fee Total | **£1,950.00** |
| LESS Abatements | |
| Payment Enclosed | |
| Abatement Authorised by: | |

The VAT date for this supply is the date of payment – not the date of issue. In the event that this fee notification is challenged please return stating your reasons. When making payment please quote the Fee Note No. - a receipt will be sent by return.

Registered No. 48621 Scotland
Faculty Services Limited - Vat No. 268 917 900
Printed on 26/12/2020 by: Douglas Ross Q C

# RE: Ministerial Code investigation- video interview- availability

**From:** [redacted]@gov.scot>
**To:** First Minister <firstminister@gov.scot>
**Date:** Wed, 30 Dec 2020 16:45:30 +0000

Hi [redacted],

Many thanks for suggesting these dates and understand that the date may need to change depending on any emergency business that might arise. Mr Hamilton would prefer the 13th if that would be possible?

I need to do a couple of things to finalise arrangements for the video interviews, but once I have done that I will send over some joining instructions. It would also be helpful to arrange a technical test with someone from the private office a couple of days before the meeting just to check everything works.

Best wishes,

[redacted]

---

**From:** [redacted]@gov.scot> **On Behalf Of** First Minister
**Sent:** 22 December 2020 19:29
**To:** [redacted]@gov.scot>; First Minister <firstminister@gov.scot>
**Subject:** RE: Ministerial Code investigation- video interview- availability

[redacted],

Apologies for the delay in getting back to you.

Can we suggest two dates please – Wednesday the 13th and Wednesday the 20th, both around 1500hrs . I do want to add a caveat ( as I have to do with any meetings I currently arrange) that the First Minister may have to react to urgent business and I therefore may ask to reschedule. This would only be in an emergency situation and I will make all attempts to ensure the meeting takes place.

Grateful if you could send me the details of the video interview so I can arrange set up.

Please do not hesitate to contact me if you have any problems or queries.

Best wishes

[redacted]

[redacted]
Private Secretary to the First Minister

5th Floor | St Andrew's House | Regent Road | Edinburgh | EH1 3DG [redacted]

Office of the First Minister of Scotland
FirstMinister.gov.scot
Prìomh Mhinistear na h-Alba

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**From:** [redacted]@gov.scot>
**Sent:** 16 December 2020 12:37
**To:** First Minister <firstminister@gov.scot>
**Subject:** Ministerial Code investigation- video interview- availability

P/S First Minister,

As you know, James Hamilton is currently conducting an investigation into the First Minister's self-referral under the Ministerial Code. The First Minster has provided a written statement to Mr Hamilton.

As set out in his letter of September 2020, Mr Hamilton may wish to invite those who have provided written statements to him to participate in an interview to discuss the content of the written statement and to allow Mr Hamilton to ask any supplementary questions.

Mr Hamilton is finalising his consideration of written statements, and would like to ask whether the First Minister would be available to participate in a video interview in the week commencing 11th or 18th of January 2021?

Best wishes,

[redacted]

**From:** James Hamilton [redacted]
**Sent:** 30 December 2020 17:26
**To:** [redacted]@gov.scot>
**Subject:** Re: FW: Correspondence for Mr Hamilton

Thanks, [redacted] Happy New Year!

James

On Wed, 30 Dec 2020 at 16:36, [redacted]@gov.scot> wrote:
Hi James,

Forwarding this to make you aware there should be a substantive response from Mr Salmond by close of play tomorrow. I will forward it when it arrives!

Best wishes,

[redacted]

**From:** Alex Salmond [redacted]
**Sent:** 23 December 2020 17:07
**To:** [redacted]@gov.scot>
**Subject:** Correspondence for Mr Hamilton

Dear Mr Hamilton,

Thank you for your letter of 19th December.

I will send you my evidence by this year end. This is on the same timescale(and indeed will be a part of the submission) which I will submit to the Parliamentary Committee. As you will be aware, Phase Four of the Parliamentary Committee investigation into the actions of the First Minister, Scottish Government officials and special advisers, is on the Scottish Ministerial Code. My evidence to you will answer to the best of my ability, both the questions you have asked of me and the considerations on why you should be examining all related breaches of the Ministerial Code and not be confined unreasonably by the remit set so carefully by the Deputy First Minster.

I do hope you understand my concerns in this. When I established this procedure as First Minister, it was designed to give public confidence in genuine independent examination of the Ministerial Code for issues concerning any First Minister. That purpose would be defeated entirely, if it was ever open to the suggestion that the process was being nobbled.

May I take this opportunity to wish you the compliments of the season.

Yours for Scotland

The Rt Hon. Alex Salmond

Sent from my iPad

On 19 Dec 2020, at 15:16, [redacted]@gov.scot wrote:

Dear Mr Salmond,

Please see attached further correspondence from Mr Hamilton.

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 07 December 2020 09:20
**To:** 'Alex Salmond' [redacted]
**Subject:** RE: Correspondence for Mr Hamilton

Dear Mr Salmond,

Please see attached correspondence from Mr Hamilton.

Best wishes

[redacted]

**From:** Alex Salmond [redacted]
**Sent:** 23 November 2020 14:52
**To:** [redacted]@gov.scot>
**Subject:** Correspondence for Mr Hamilton

Dear Mr Hamilton

Thank you for your letter of 29th October. I apologise for the delay in replying, but I had assumed that it had crossed with the exchange in the Scottish Parliament, detailed below, of that same date. To that end, I was awaiting a follow up letter from you, confirming that indeed your remit was not "limited to one aspect of the Ministerial Code";

- **Oliver Mundell (Dumfriesshire) (Con):** Will the First Minister agree to expand the ministerial code investigation to include her statements to Parliament and her actions

on the legal advice regarding the judicial review into Alex Salmond's alleged behaviour?

- **The First Minister (Nicola Sturgeon):** My view right now is that James Hamilton, who is the adviser undertaking the investigation into the ministerial code, is not restricted at all in the issues that he can look at. If he thinks that there are any issues that engage the ministerial code or could in any way constitute a breach of the ministerial code, my view is that he is free to look at them. If he considers that that requires any change to his official remit, I am sure that he is perfectly able to say that. However, for the record and to be clear, I do not consider his remit to be limited to just one aspect of the ministerial code.

You will have noted that this parliamentary exchange seems at odds with your letter, which suggests that you are restricted to answering the "questions asked in the referral". You state;

*''As you are aware the remit of the referral was set out by the Deputy First Minister in a PQ response to the Scottish Parliament made on 6 August 2020. Considering that the principal matter I am asked to consider concerns an alleged breach of the Ministerial Code in the First Minister's failure to record contacts with you it seems entirely logical to ask the question whether the First Minister was in fact involved in any way in the Scottish Government investigation. In seeking to answer the questions asked in the referral I will of course have to consider any relevant surrounding circumstances."*

As detailed in my previous letter, I know of no aspect of the Ministerial Code which prevents a First Minister intervening in a process, not least one which was found by the Court of Session to be "unlawful", and as one consequence of which said process is currently being examined by the SGHHC Committee of the Scottish Parliament.

As I understand it, not intervening to ensure Government is not acting unlawfully when there is a danger that this might be the case, could be considered a breach in terms of the Ministerial Code. Non-intervention in this matter is relevant to the period covering spring and summer of 2018, and in the autumn, this extended to agreeing with or permitting the Permanent Secretary to disregard external legal advice on the Government's prospects of success in the Judicial Review.

This was further compounded by Parliamentary statements on repeated occasions, which have been questioned by MSPs as misleading, most pertinently in relation to the timing of when the First Minister first knew of the investigation and the explanation that the 2nd April meeting was held in the First Minister's private home because she thought it was a matter of party business. There is, of course, the further question of the criminal leak of protected information to the Daily Record newspaper on 23/24th August 2018 and what, if anything, was the First Minster's state of awareness of the circumstances and the potential involvement of her staff in same.

When I established the independent procedure for referral of purported First Ministerial breaches of the Ministerial Code, it was an innovation and one carried through in good faith. I appointed people of outstanding calibre, such as yourself as independent advisors, so that

no-one could suggest that any referrals were being "fixed" either by the civil service or the Government.

It would be disappointing if this is now being done by the Deputy First Minister, by virtue of confining your terms of referral.

I look forward to your confirmation that your remit is not "limited to just one aspect of the Ministerial code". On that basis I will submit the evidence for which you have asked.

Two final matters.

Firstly, I enclose the letter from the Crown Office which you requested. As you will note, it threatens prosecution if I were to reveal to the Parliamentary Committee (and presumably to yourself) documents which were disclosed in the course of the criminal case.

Secondly, I confirm that the record of Whatapp messages between the First Minster and myself from 5 November 2017 to 20 July 2018 supplied to the Parliamentary Committee by the First Minister and published on their website is correct. [redacted]

I look forward to hearing from you

Yours sincerely

Rt Hon Alex Salmond

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**********

<Mr Salmond- correspondence- 19 December.docx>

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_____
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For more information please visit http://www.symanteccloud.com
_____

**From:** [redacted]
**Sent:** 31 December 2020 09:25
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** RE: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Hi [redacted],

If there are any further invoices come into to SGLD for this case we will pass them over to you.

Regards,

[redacted]

[redacted]
SG Legal Directorate : Area 1G North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: [redacted]

E-mail: [redacted]

I am working from home and can be contacted by email and Skype

**From:** [redacted]
**Sent:** 30 December 2020 16:36
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** RE: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

Hi [redacted],

Thanks for forwarding, and apologies for the way this has made its way to you. I had asked for invoices to be sent directly to me for me to arrange payment, so I will remind the clerks of this.

I have copied in [redacted] who is handling this for our division, and should be able to advise who can help with this.

To give a bit of context in case it is helpful- this work relates to the Ministerial code investigation being undertaken by James Hamilton, independent advisor on the ministerial

code. As this work is independent of government, suitable external legal support for Mr Hamilton was arranged, and DFM and the LA agreed to this being sourced.

Happy to discuss.

Best wishes,

[redacted]

**From:** [redacted]
**Sent:** 30 December 2020 12:01
**To:** [redacted]
**Cc:** SGLD Finance unit [redacted]
**Subject:** FW: FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

[redacted]

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Regards,

[redacted]

[redacted]
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Tel: 0131 244 0546

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[redacted]
Just to confirm that we have checked and the fee note should indeed be referred to Rebecca Whyte for payment.
Shirley

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Thanks,
[redacted]

[redacted]**k**
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G-A North / Victoria Quay/ Edinburgh EH6 6QQ
M [redacted]
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gov.scot

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Regards,

[redacted]

[redacted]
SG Legal Directorate : Area 1G North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: [redacted]

E-mail: [redacted]

I am working from home and can be contacted by email and Skype

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**Sent:** 26 December 2020 19:07
**To:** SGLD Finance unit [redacted]
**Cc:** Supplier Prompt Payment [redacted]
**Subject:** FEE NOTE - Your Ref: , Client: Mr James Hamilton, Our Ref: 203976 | Advocate: Douglas Ross Q.C. ; Case Type: CIVIL NON LEGAL AID

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**Case Title:** Ministerial Code Referral
**Case ID:** 203976
**Client:** Mr James Hamilton
**Case Type:** CIVIL NON LEGAL AID
**Your ref:**

Kind regards,
Faculty Services Ltd

For further detail of payment terms please refer to The Scheme for Accounting for and Recovery of Counsels Fees which can be found here

Fee enquiries to: [redacted]
Payment enquiries to: [redacted]
Credit Control enquiries to: [redacted]

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# Re: FW: SUBMISSION - For the attention of James Hamilton

**From:** James Hamilton <[redacted]>
**To:** [redacted]@gov.scot>
**Date:** Thu, 31 Dec 2020 17:52:55 +0000

Hi [redacted]

Thanks! And happy new year to you too!

James

On Thu, 31 Dec 2020 at 15:53, <[redacted]@gov.scot> wrote:

> Hi James,
>
> Submission from Mr Salmond is attached.
>
> Hope you have had a good Christmas and that you have a happy New Year!
>
> Best wishes,
>
> [redacted]

---

**From:** Alex Salmond <alex@alexsalmond.scot>
**Sent:** 31 December 2020 15:41
**To:** [redacted]@gov.scot>
**Subject:** SUBMISSION - For the attention of James Hamilton

Dear [redacted]

Correspondence for Mr Hamilton

Please see attached correspondence, submission and two appendices for the attention of Mr James Hamilton. Please confirm receipt and thank you for your assistance.

Best wishes for 2021

Yours for Scotland

Alex Salmond

**********

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**From:** [redacted]
**Sent:** 31 December 2020 16:40
**To:** Alex Salmond [redacted]
**Subject:** RE: SUBMISSION - For the attention of James Hamilton

Dear Mr Salmond,

Many thanks for sending this, I can confirm receipt of this submission and that I have sent it to Mr Hamilton.

I hope that you have had a good Christmas and that you have a happy New Year.

Best wishes,

[redacted]

**From:** Alex Salmond [redacted]
**Sent:** 31 December 2020 15:41
**To:** [redacted]@gov.scot>
**Subject:** SUBMISSION - For the attention of James Hamilton

Dear [redacted]

Correspondence for Mr Hamilton

Please see attached correspondence, submission and two appendices for the attention of Mr James Hamilton. Please confirm receipt and thank you for your assistance.

Best wishes for 2021

Yours for Scotland

Alex Salmond

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- Mr James Hamilton
- Independent Adviser on the Scottish Ministerial Code
- 
- 
- 
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- 
- 
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1. Introduction

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3. The Whatsapp messages between myself and the First Minister were provided to the Parliamentary Committee by the First Minister and published by them. Therefore, I do not enclose them here, save for the inclusion of the message of 13th July 2018 in unredacted form referred to below. (Appendix A)

## 2. The Terms of Reference

4. Mr Hamilton wrote to me on 8th September, 29th October, 16th November, 4th and 19th December. I replied on 6th and 17th October, 23rd November and 23rd December. I finally agreed under some protest to make this submission.

The reason for my concern is that the remit drawn up for Mr Hamilton focuses on whether the First Minister intervened in a civil service process. As I have pointed out to Mr Hamilton, I know of no provisions in the Ministerial Code which makes it improper for a First Minister to so intervene.

5. To the contrary, intervention by the First Minister in an apparently unlawful process (subsequently confirmed by the Court of Session) would not constitute a breach precisely because the First Minister is under a duty in clause 2.30 of the Ministerial Code to avoid such illegality on the part of the Government she leads.

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13. Beyond the terms of the remit set for Mr Hamilton by the Deputy First Minister, there are other aspects of the conduct of the First Minister which, in my submission, require scrutiny and determination in relation to breaches of the Ministerial Code.

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16. On receipt of the letter from the Permanent Secretary first informing me of complaints on 7th March 2018 I had secured Levy and McRae as my solicitors and Duncan Hamilton, Advocate and Ronnie Clancy QC as my counsel.

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the First Minister. I did not know at that stage the degree of knowledge and involvement in the policy on the part of both the First Minister and her Chief of Staff.

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26. [redacted] on the 13th July 2018 that the First Minister wanted to see me again and we met once again at her house at her request the following day,14th July 2018. This is shown at Appendix A. There was no-one else at this meeting. She specifically agreed to correct the impression that had been suggested to my counsel in discussions between our legal representatives that she was opposed to arbitration. I followed this up with a WhatsApp message on the 16th July 2018.

27. On 18th July 2018 the First Minister phoned me at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of [redacted]. She urged me to submit a substantive rebuttal of the specific complaints against me, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured me that my submission would be judged fairly. She told me I would receive a letter from the Permanent Secretary offering me further time to submit such a rebuttal which duly arrived later that day. As it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and she had already submitted her final report to the Permanent Secretary. My view is now that it was believed that my submission of a rebuttal would weaken the case for Judicial Review (my involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18th July 2018 and the Permanent

Secretary's letter of the same date suggesting that it was in my "interests" to submit a substantive response was designed to achieve that.

28. In terms of the meetings with me, the only breaches of the Ministerial Code are the failure to inform civil servants timeously of the nature of the meetings.

29. My view is that the First Minister should have informed the Permanent Secretary of the legal risks they were running and ensured a proper examination of the legal position and satisfied herself that her Government were acting lawfully.

30. Further once the Judicial Review had commenced, and at the very latest by October 31st 2018 the Government and the First Minister knew of legal advice from external counsel (the First Minister consulted with counsel on 13th November) that on the balance of probability they would lose the Judicial Review and be found to have acted unlawfully. Despite this the legal action was continued until early January 2019 and was only conceded after both Government external counsel threatened to resign from the case which they considered to be unstateable. This, on any reading, is contrary to section 2.30 of the Ministerial Code.

31. Most seriously, Parliament has been repeatedly misled on a number of occasions about the nature of the meeting of 2nd April 2018.

32. The First Minister told Parliament (see Official Report of 8th,10th & 17th January 2019) that she first learned of the complaints against me when I visited her home on 2nd April 2018. That is untrue and is a breach of the Ministerial Code.

The evidence from Mr Aberdein that he personally discussed the existence of the complaints, and summarised the substance of the complaints, with the First Minister in a pre arranged meeting in Parliament on 29th March 2018 arranged for that specific purpose cannot be reconciled with the position of the First Minister to Parliament. [redacted]

33. In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29th March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29th March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2nd April was on SNP Party business (Official Report 8th & 10th January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion -

the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29th March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code.

Further, the repeated representation to the Parliament of the meeting on the 2nd April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2nd April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29th March 2018.

34. The First Minister additionally informed Parliament (Official Report 10th January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on the 2nd April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

35. I also believe it should be investigated further in terms of the Ministerial Code, whether the criminal leak of part of the contents of the Permanent Secretary's Decision report to [redacted] was sourced from the First Minister's Office. [redacted]. I enclose at Appendix B the summary of the ICO review of the complaint which explains the criminal nature of the leak and the identification of 23 possible staff sources of the leak given that the Prosecutor has "sympathy with the hypothesis that the leak came from an employee of the Scottish Government". My reasoning is as follows. The leak did not come from me, or anyone representing me. In fact I sought interdict to prevent publication and damage to my reputation. The leak is very unlikely indeed to have come from either of the two complainers. The Chief Constable, correctly, refused to accept a copy of the report when it was offered to Police Scotland on August 21st 2018 by the Crown Agent. It cannot, therefore have leaked from Police Scotland. Scottish Government officials had not leaked the fact of an investigation from January when it started. The only additional group of people to have received such a document, or summary of such a document, [redacted] was the First Minister's Office as indicated in paragraph 4.8 of the ICO Prosecutor's Report. In that office, the document would be accessed by the First Minister and her Special Advisers.

I would be happy to offer further information on this submission.

Rt Hon Alex Salmond 31st December 2020

APPENDIX A

11.01am, 13th July 2018

Grateful for your message [redacted] Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

Information Commissioner's Office

Upholding information rights

House, Water Lane, Wilmslow, Cheshire, SK9 5AF T. 0303 123 1113 F. 01625 524510
www.ico.org.uk

Our ref: CH/IC/0295/2018

Mr David McKie
Levy & McRae
Pacific House
70 Wellington Street
Glasgow
G2 GUA

By email only: DMckie@lemac.co.uk Dated

28 May 2020

Dear Mr McKie

4. Re: Your Client – Mr A. Salmond/ Your Ref DMK/LL/STE039-0001

## 1. Introduction

1.1 Further to a request made on behalf of your above client, I have been asked to review a decision made by the Criminal Investigations Team (**CRIT**) at the ICO to discontinue an investigation into potential offences under **s.170 Data Protection Act (DPA) 2018**, in accordance with the Victims Right to Review scheme.

1.2 I am a Solicitor (Prosecutor) based within the Regulatory Enforcement Team at the ICO. I confirm that I have had no previous dealings with the matter.

1.3 My remit is to consider whether, having investigated the complaint, the decision made by the investigations team to not investigate further was correct and reasonable.

1.4 I have had full access to, and have carefully reviewed, all material gathered and held by CRIT during the course of their investigations.

1.5 The review concerns the outcome of an investigation into a complaint made under **s.165 DPA 2018** on behalf of Mr Salmond to the ICO on the 29 October 2018.

1.6 The complaint pertained to the suspected unlawful obtaining and disclosing of personal data relating to Mr Salmon to the press in August 2018; a potential offence under **s.170 DPA 2018**.

[redacted]

[redacted] Furthermore, the fact and content of legal advice [redacted] regarding the allegations made against Mr Salmond [redacted]

## 2. Relevant Law

2.1 Under **s.170 DPA 2018**, it is an offence to, knowingly or recklessly, obtain, disclose, procure disclosure or retain personal data without the consent of the data controller.

2.2 The information contained in the internal misconduct report and the legal advice was highly sensitive and personal, in that it related to allegations of misconduct made against Mr Salmond. It would certainly meet the definition of "personal data" pertaining to a living individual as per **s.3(2) DPA 2018**.

[redacted] It was clear from the events set out in the complaint sent on behalf of Mr Salmond that the personal data had indeed been obtained and disclosed [redacted]

2.4 The ensuing investigation by the ICO was to establish whether any individual could be identified and potentially prosecuted for the unlawful obtaining and/or disclosing of the data under **s.170 DPA 2018**.

2.5 The offence of unlawfully obtaining and/or disclosing personal data contrary to **s.170 DPA 2018** is an offence committed against the data controller. In this matter, the personal data contained in the internal misconduct investigation report and in legal advice [redacted] belonged to the Scottish Government (SG).

2.6 The SG was therefore the data controller in accordance with **s.3(6) DPA 2018** and the potential complainant in this matter.

2.7 As the data subject under **s.3(5) DPA 2018,** Mr Salmond would however also be classed as a "victim". Any impact on him resulting from the offence would of course therefore be an important consideration in ascertaining the level of harm caused by the offence.

**2.8** The issue for the investigations team was whether the source of the data leak could be identified, to enable a prosecution to be brought against the individual responsible under **s.170 DPA 2018.**

## 3. Review of the evidence

3.1 In order to identify a suspect, it would be necessary to identify the method of disclosure used.

3.2 A forensic examination of the IT systems used by the SG was carried out as part of the Data Handling Review conducted by the Data Protection Officer at the SG following the data leak.

3.3 No evidence was found that data was leaked through email, document sharing or downloading to portable media device. Furthermore, no evidence was found that a third party had unlawfully accessed the SG's IT systems.

3.4 Without an electronic trail to follow, it was difficult to uncover the method of disclosure used.

3.5 To progress the investigation, a witness would be needed who would be willing to provide information about the method of disclosure (for example, by hard copy being passed in person) and the identity of the culprit.

[redacted]

3.7 23 members of staff were identified as having knowledge of, or involvement in, the internal misconduct enquiry. These members of staff were interviewed by the Data Protection Officer at the SG as part of their Data Handling Review. The interviews did not disclose any information which would enable a suspect to be identified.

3.8 In the absence therefore of any further information coming to light, or any witness coming forward, there was insufficient evidence to point to any specific suspect and to allow the investigation to move forward.

## 4. Representations on behalf of Mr Salmond

4.1 In addition to all the material provided by the SG, I have also considered the representations made on behalf of Mr Salmond in previous correspondence with Levy & McRae, in particular the submission that the timing of the leak [redacted] raises an irresistible conclusion that the leak came from within the SG.

4.2 The leak came a few hours after the SG had notified their intention to publish a press release and very shortly after Levy & McRae had given notice of their intention to apply for an interim interdict. The effect of the leak was to defeat the court action because the information was by then in the public domain.

4.3 I have also considered the statement of Detective Chief Superintendent Lesley Boal, helpfully provided by Levy & McRae. The statement confirms that at a meeting on the 21 August 2018, the police were offered a copy of the internal misconduct investigation report but refused to take it. Furthermore, at that meeting, DCS Boal voiced

concerns about the SG making a public statement about the outcome of their investigations.

4.4 Levy & McRae point to this statement to show that the SG (or an employee thereof) wanted the information to get into the public domain and to show that the police are highly unlikely to have been the source of the leak.

4.5 The SG sent a proposed press release to Levy & McRae on the 23 August. In response, Levy & McRae notified the SG of their intention to apply for an interim interdict. The SG responded by confirming that they would not issue the press release in the meantime. Events were then of course overtaken by the leak of the information [redacted] into the public domain.

4.6 I have sympathy with the hypothesis that the leak came from an employee of the SG and agree that the timing arguably could raise such an inference. It was still necessary to identify a suspect.

4.7 The interviews with the relevant staff members didn't provide any leads however and no other person had come forward volunteering information.

4.8 There remains the possibility that the leak came from elsewhere. The list of stakeholders who had access to the internal misconduct investigation report includes the original complainants, the QC, the First Minister's Principal Private Secretary, the Crown Office & Procurator Fiscal Service and Mr Salmond and Levy & McRae, as well as the relevant staff members of the SG.

4.9 The list of stakeholders who had access to the legal advice provided [redacted] during the misconduct investigation included staff within [redacted], the Permanent Secretary's Office and officials in the SG's Legal Directorate.

4.10 Following investigation, there was no evidence to identify any specific individual within these lists, or any member of staff working for anybody within these lists, as a potential suspect.

## 5. Review of decision by CRIT

5.1 As investigators, CRIT must have regard to the provisions of the **Criminal Procedures and Investigations Act 1996**, specifically s.23(1) Code of Practice Part II.

5.2 Point 3.5 provides that the investigator shall pursue all reasonable lines of inquiry. CRIT have a duty therefore to investigate data complaints to an appropriate extent.

5.3 During this investigation, it is clear that CRIT gathered extensive information from the SG, seeking further information and clarification where needed.

5.4 The result was no suspect could be identified from the evidence collated and the decision was taken that the investigation could not be progressed without further information coming to light.

5.5 I am satisfied that the complaint had been investigated to an appropriate extent, with all reasonable avenues of inquiry considered and/or pursued.

5.6 When deciding whether to proceed to prosecute in any case, I am required to apply the two stage test prescribed by the Code for Crown Prosecutors issued by the Crown Prosecution Service.

5.7 The first stage is to consider whether there is sufficient evidence to provide a realistic prospect of conviction. Without a suspect, there is simply no realistic prospect of conviction because there is nobody to prosecute and/or convict. I do not therefore even reach the second stage of the test, which is to consider whether it would be in the public interest to prosecute.

5.8 I am satisfied that in the absence of any suspect, the decision to discontinue the investigation was correct and reasonable in all the circumstances.

5.9 If further information comes to light, for example if a witness comes forward, then I have no doubt that the matter would be properly

revisited. At the present time, however, I am satisfied that there are no grounds to re-instate the investigation.

Yours sincerely,

**Carolyn Hubble**
**Solicitor (Prosecutor)**

**From:** [redacted]
**Sent:** 31 December 2020 15:53
**To:** 'James Hamilton' [redacted]
**Subject:** FW: SUBMISSION - For the attention of James Hamilton

Hi James,

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Best wishes,

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25. My desire to avoid damaging and expensive litigation remained. My legal team thereafter offered arbitration as an alternative to putting the matter before the Court of Session. That proposal was designed to offer a quick and relatively inexpensive means of demonstrating the illegality of the procedure in a process which guaranteed the confidentiality of the complainers. It would also have demonstrated the illegality of the process in a forum which would be much less damaging to the Scottish Government than the subsequent public declaration of illegality. I was prepared at that time to engage fully with the procedure in the event my legal advice was incorrect. In the event, of course, it was robust. I explained the advantages of such an approach to the First Minister in a Whatsapp message of 5th July 2018.

26. [redacted] on the 13th July 2018 that the First Minister wanted to see me again and we met once again at her house at her request the following day,14th July 2018. This is shown at Appendix A. There was no-one else at this meeting. She specifically agreed to correct the impression that had been suggested to my counsel in discussions between our legal representatives that she was opposed to arbitration. I followed this up with a WhatsApp message on the 16th July 2018.

27. On 18th July 2018 the First Minister phoned me at 13.05 to say that arbitration had been rejected and suggested that this was on the advice of [redacted] She urged me to submit a substantive rebuttal of the specific complaints against me, suggested that the general complaints already answered were of little consequence and would be dismissed, and then assured me that my submission would be judged fairly. She told me I would receive a letter from the Permanent Secretary offering me further time to submit such a rebuttal which duly arrived later that day. As it turned out the rebuttal once submitted was given only cursory examination by the Investigating Officer in the course of a single day and she had already submitted her final report to the Permanent Secretary. My view is now that it was believed that my submission of a rebuttal would weaken the case for Judicial Review (my involvement in rebutting the substance of the complaints being seen to cure the procedural unfairness) and that the First Ministers phone call of 18th July 2018 and the Permanent

Secretary's letter of the same date suggesting that it was in my "interests" to submit a substantive response was designed to achieve that.

28. In terms of the meetings with me, the only breaches of the Ministerial Code are the failure to inform civil servants timeously of the nature of the meetings.

29. My view is that the First Minister should have informed the Permanent Secretary of the legal risks they were running and ensured a proper examination of the legal position and satisfied herself that her Government were acting lawfully.

30. Further once the Judicial Review had commenced, and at the very latest by October 31st 2018 the Government and the First Minister knew of legal advice from external counsel (the First Minister consulted with counsel on 13th November) that on the balance of probability they would lose the Judicial Review and be found to have acted unlawfully. Despite this the legal action was continued until early January 2019 and was only conceded after both Government external counsel threatened to resign from the case which they considered to be unstateable. This, on any reading, is contrary to section 2.30 of the Ministerial Code.

31. Most seriously, Parliament has been repeatedly misled on a number of occasions about the nature of the meeting of 2nd April 2018.

32. The First Minister told Parliament (see Official Report of 8th,10th & 17th January 2019) that she first learned of the complaints against me when I visited her home on 2nd April 2018. That is untrue and is a breach of the Ministerial Code.

The evidence from Mr Aberdein that he personally discussed the existence of the complaints, and summarised the substance of the complaints, with the First Minister in a pre arranged meeting in Parliament on 29th March 2018 arranged for that specific purpose cannot be reconciled with the position of the First Minister to Parliament. [redacted]

33. In her written submission to the Committee, the First Minister has subsequently admitted to that meeting on 29th March 2018, claiming to have previously 'forgotten' about it. That is, with respect, untenable. The pre-arranged meeting in the Scottish Parliament of 29th March 2018 was "forgotten" about because acknowledging it would have rendered ridiculous the claim made by the First Minister in Parliament that it had been believed that the meeting on 2nd April was on SNP Party business (Official Report 8th & 10th January 2019) and thus held at her private residence. In reality all participants in that meeting were fully aware of what the meeting was about and why it had been arranged. The meeting took place with a shared understanding of the issues for discussion -

the complaints made and the Scottish Government procedure which had been launched. The First Minister's claim that it was ever thought to be about anything other than the complaints made against me is wholly false.

The failure to account for the meeting on 29th March 2018 when making a statement to Parliament, and thereafter failing to correct that false representation is a further breach of the Ministerial Code.

Further, the repeated representation to the Parliament of the meeting on the 2nd April 2018 as being a 'party' meeting because it proceeded in ignorance of the complaints is false and manifestly untrue. The meeting on 2nd April 2018 was arranged as a direct consequence of the prior meeting about the complaints held in the Scottish Parliament on 29th March 2018.

34. The First Minister additionally informed Parliament (Official Report 10th January 2018) that 'I did not know how the Scottish Government was dealing with the complaint, I did not know how the Scottish Government intended to deal with the complaint and I did not make any effort to find out how the Scottish Government was dealing with the complaint or to intervene in how the Scottish Government was dealing with the complaint.'

I would contrast that position with the factual position at paragraphs 20 and 27 above. The First Minister's position on this is simply untrue. She did initially offer to intervene, in the presence of all those at the First Ministers house on the 2nd April 2018. Moreover, she did engage in following the process of the complaint and indeed reported the status of that process to me personally.

35. I also believe it should be investigated further in terms of the Ministerial Code, whether the criminal leak of part of the contents of the Permanent Secretary's Decision report [redacted] was sourced from the First Minister's Office. [redacted]. I enclose at Appendix B the summary of the ICO review of the complaint which explains the criminal nature of the leak and the identification of 23 possible staff sources of the leak given that the Prosecutor has "sympathy with the hypothesis that the leak came from an employee of the Scottish Government". My reasoning is as follows. The leak did not come from me, or anyone representing me. In fact I sought interdict to prevent publication and damage to my reputation. The leak is very unlikely indeed to have come from either of the two complainers. The Chief Constable, correctly, refused to accept a copy of the report when it was offered to Police Scotland on August 21st 2018 by the Crown Agent. It cannot, therefore have leaked from Police Scotland. Scottish Government officials had not leaked the fact of an investigation from January when it started. The only additional group of people to have received such a document, or summary of such a document, [redacted] was the First Minister's Office as indicated in paragraph 4.8 of the ICO Prosecutor's Report. In that office, the document would be accessed by the First Minister and her Special Advisers.

I would be happy to offer further information on this submission.

Rt Hon Alex Salmond 31st December 2020

APPENDIX A

11.01am, 13th July 2018

Grateful for your message [redacted] Happy to meet privately. Understand you are away from Monday so given developments presumably this weekend best? I have material which it is important for you to see. I will happily come to you.

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Our ref: CH/IC/0295/2018

Mr David McKie
Levy & McRae
Pacific House
70 Wellington Street
Glasgow
G2 GUA

By email only: DMckie@lemac.co.uk Dated

28 May 2020

Dear Mr McKie

4. Re: Your Client – Mr A. Salmond/ Your Ref DMK/LL/STE039-0001

## 1. Introduction

1.1 Further to a request made on behalf of your above client, I have been asked to review a decision made by the Criminal Investigations Team (**CRIT**) at the ICO to discontinue an investigation into potential offences under **s.170 Data Protection Act (DPA) 2018**, in accordance with the Victims Right to Review scheme.

1.2 I am a Solicitor (Prosecutor) based within the Regulatory Enforcement Team at the ICO. I confirm that I have had no previous dealings with the matter.

1.3 My remit is to consider whether, having investigated the complaint, the decision made by the investigations team to not investigate further was correct and reasonable.

1.4 I have had full access to, and have carefully reviewed, all material gathered and held by CRIT during the course of their investigations.

1.5 The review concerns the outcome of an investigation into a complaint made under **s.165 DPA 2018** on behalf of Mr Salmond to the ICO on the 29 October 2018.

1.6 The complaint pertained to the suspected unlawful obtaining and disclosing of personal data relating to Mr Salmon to the press in August 2018; a potential offence under **s.170 DPA 2018**.

[redacted]

[redacted] Furthermore, the fact and content of legal advice [redacted] regarding the allegations made against Mr Salmond [redacted]

## **2.** Relevant Law

2.1 Under **s.170 DPA 2018**, it is an offence to, knowingly or recklessly, obtain, disclose, procure disclosure or retain personal data without the consent of the data controller.

2.2 The information contained in the internal misconduct report and the legal advice was highly sensitive and personal, in that it related to allegations of misconduct made against Mr Salmond. It would certainly meet the definition of "personal data" pertaining to a living individual as per **s.3(2) DPA 2018**.

[redacted] t was clear from the events set out in the complaint sent on behalf of Mr Salmond that the personal data had indeed been obtained and disclosed [redacted]

2.4 The ensuing investigation by the ICO was to establish whether any individual could be identified and potentially prosecuted for the unlawful obtaining and/or disclosing of the data under **s.170 DPA 2018**.

2.5 The offence of unlawfully obtaining and/or disclosing personal data contrary to **s.170 DPA 2018** is an offence committed against the data controller. In this matter, the personal data contained in the internal misconduct investigation report and in legal advice from [redacted] belonged to the Scottish Government (SG).

2.6 The SG was therefore the data controller in accordance with **s.3(6) DPA 2018** and the potential complainant in this matter.

2.7 As the data subject under **s.3(5) DPA 2018,** Mr Salmond would however also be classed as a "victim". Any impact on him resulting from the offence would of course therefore be an important consideration in ascertaining the level of harm caused by the offence.

**2.8** The issue for the investigations team was whether the source of the data leak could be identified, to enable a prosecution to be brought against the individual responsible under **s.170 DPA 2018.**

## **3.** Review of the evidence

3.1 In order to identify a suspect, it would be necessary to identify the method of disclosure used.

3.2 A forensic examination of the IT systems used by the SG was carried out as part of the Data Handling Review conducted by the Data Protection Officer at the SG following the data leak.

3.3 No evidence was found that data was leaked through email, document sharing or downloading to portable media device. Furthermore, no evidence was found that a third party had unlawfully accessed the SG's IT systems.

3.4 Without an electronic trail to follow, it was difficult to uncover the method of disclosure used.

3.5 To progress the investigation, a witness would be needed who would be willing to provide information about the method of disclosure (for example, by hard copy being passed in person) and the identity of the culprit.

[redacted]

3.7 23 members of staff were identified as having knowledge of, or involvement in, the internal misconduct enquiry. These members of staff were interviewed by the Data Protection Officer at the SG as part of their Data Handling Review. The interviews did not disclose any information which would enable a suspect to be identified.

3.8 In the absence therefore of any further information coming to light, or any witness coming forward, there was insufficient evidence to point to any specific suspect and to allow the investigation to move forward.

## **4.** Representations on behalf of Mr Salmond

4.1 In addition to all the material provided by the SG, I have also considered the representations made on behalf of Mr Salmond in previous correspondence with Levy & McRae, in particular the submission that the timing of the leak [redacted] raises an irresistible conclusion that the leak came from within the SG.

4.2 The leak came a few hours after the SG had notified their intention to publish a press release and very shortly after Levy & McRae had given notice of their intention to apply for an interim interdict. The effect of the leak was to defeat the court action because the information was by then in the public domain.

4.3 I have also considered the statement of Detective Chief Superintendent Lesley Boal, helpfully provided by Levy & McRae. The statement confirms that at a meeting on the 21 August 2018, the police were offered a copy of the internal misconduct investigation report but refused to take it. Furthermore, at that meeting, DCS Boal voiced

concerns about the SG making a public statement about the outcome of their investigations.

4.4 Levy & McRae point to this statement to show that the SG (or an employee thereof) wanted the information to get into the public domain and to show that the police are highly unlikely to have been the source of the leak.

4.5 The SG sent a proposed press release to Levy & McRae on the 23 August. In response, Levy & McRae notified the SG of their intention to apply for an interim interdict. The SG responded by confirming that they would not issue the press release in the meantime. Events were then of course overtaken by the leak of the information [redacted] and into the public domain.

4.6 I have sympathy with the hypothesis that the leak came from an employee of the SG and agree that the timing arguably could raise such an inference. It was still necessary to identify a suspect.

4.7 The interviews with the relevant staff members didn't provide any leads however and no other person had come forward volunteering information.

4.8 There remains the possibility that the leak came from elsewhere. The list of stakeholders who had access to the internal misconduct investigation report includes the original complainants, the QC, the First Minister's Principal Private Secretary, the Crown Office & Procurator Fiscal Service and Mr Salmond and Levy & McRae, as well as the relevant staff members of the SG.

4.9 The list of stakeholders who had access to the legal advice provided by [redacted] during the misconduct investigation included staff within [redacted] the Permanent Secretary's Office and officials in the SG's Legal Directorate.

4.10 Following investigation, there was no evidence to identify any specific individual within these lists, or any member of staff working for anybody within these lists, as a potential suspect.

## 5. Review of decision by CRIT

5.1 As investigators, CRIT must have regard to the provisions of the **Criminal Procedures and Investigations Act 1996**, specifically s.23(1) Code of Practice Part II.

5.2 Point 3.5 provides that the investigator shall pursue all reasonable lines of inquiry. CRIT have a duty therefore to investigate data complaints to an appropriate extent.

5.3 During this investigation, it is clear that CRIT gathered extensive information from the SG, seeking further information and clarification where needed.

5.4 The result was no suspect could be identified from the evidence collated and the decision was taken that the investigation could not be progressed without further information coming to light.

5.5 I am satisfied that the complaint had been investigated to an appropriate extent, with all reasonable avenues of inquiry considered and/or pursued.

5.6 When deciding whether to proceed to prosecute in any case, I am required to apply the two stage test prescribed by the Code for Crown Prosecutors issued by the Crown Prosecution Service.

5.7 The first stage is to consider whether there is sufficient evidence to provide a realistic prospect of conviction. Without a suspect, there is simply no realistic prospect of conviction because there is nobody to prosecute and/or convict. I do not therefore even reach the second stage of the test, which is to consider whether it would be in the public interest to prosecute.

5.8 I am satisfied that in the absence of any suspect, the decision to discontinue the investigation was correct and reasonable in all the circumstances.

5.9 If further information comes to light, for example if a witness comes forward, then I have no doubt that the matter would be properly

revisited. At the present time, however, I am satisfied that there are no grounds to re-instate the investigation.

Yours sincerely,

• Carolyn Hubble

Solicitor Prosecutor

| eRDM reference | Date | Time | Note |
|---|---|---|---|
| | 15 March 2021 | | 4 additional staff appointed to Secretariat – [redacted] |
| | | | |
| A42638864 | 16 March 2021 | 1046 | [redacted] sends [redacted] and [redacted] 'near final draft" |
| A42638864 | 16 March 2021 | 1118 | [redacted] sends comments on redactions that would be needed around jigsaw identification. [redacted] will start marking up redactions that will be required. |
| A42638864 | 16 March 2021 | 1244 | [redacted] sends initial thoughts on redactions that would be needed. |
| A42645686 | 16 March 2021 | 1407 | [redacted] – notes challenges of publishing a report in line with the approach taken by the Parliament Committee. Thinks MR Hamilton is likely to have concerns about that which would mean need to rethink approach to include much less discussion of the evidence gathered and the findings on which the conclusions are based. |
| A42645686 | 16 March 2021 | 1522 | [redacted] – more background to the redaction approach. Explains sections of FFM statement that were removed from Parliament website following intervention by COPFS around jigsaw identification. |
| A42638854 | 17 March 2021 | 1644 | [redacted] Lorraine Kaye's statement as published by Scottish Parliament with suggested redactions to Hamilton Report marked up in highlights. |
| A42642786 | 17 March 2021 | 1656 | [redacted] – forwards on [redacted] email of 1644 – one of the other temporary members of the secretariat has provided a revised take on likely redactions based on published material. Removes less material across report with exception of Chapter 4. |
| A42646704 | 17 March 2021 | 1828 | [redacted] suggestion around not naming GA as the other participant in meetings. |
| A42646704 | 18 March 2021 | 0651 | [redacted] not possible to withhold GA name from other meetings |
| A42646704 | 18 March 2021 | 0901 | [redacted] inconsequential |
| A42646704 | 18 March 2021 | 0902 | [redacted] inconsequential |
| A42645685 | 19 March 2021 | 1108 | [redacted] cc [redacted] – sends draft redactions to entire report. |
| A42645685 | 19 March 2021 | 1522 | [redacted] cc [redacted] – noting logging off, asking to check approach in previous email. |
| A42645685 | 19 March 2021 | 1820 | [redacted] – suggesting making brackets in bold to make length of redaction stand out more. |
| A42645684 | 20 March 2021 | 1500 | [redacted] sends [redacted] "really final draft of report" |

| | | | |
|---|---|---|---|
| A42650876 | 20 March 2021 | 1651 | [redacted] has read the latest (and final) version of the report and marked up the redactions to be made in yellow highlight. Notes that [redacted] may ask for some changes – but need her perspective and discussion with her before she (and probably Neil [Rennick] and Gavin [Henderson] make final decisions. |
| A42645685 | 20 March 2021 | 1658 | [redacted] cc [redacted] – ok to make bold |
| A42650876 | 20 March 2021 | 1824 | [redacted] cc [redacted] – sends draft redacted Word version with a question around one redaction. |
| A42645684 | 20 March 2021 | 1829 | [redacted] sends redacted copy to [redacted] - asks if [redacted] could make cosmetic changes to that version to avoid further redaction work |
| A42645685 | 21 March 2021 | 1111 | [redacted] cc [redacted] – text of report now signed off -includes cosmetic changes and removed comments. |
| A42650876 | 21 March 2021 | 1315 | [redacted] to [redacted] cc [redacted] and [redacted] – some small changes to draft redactions. Notes "I'd suggest that, you convert all the highlights to yellow when you hand over this version to [redacted] for quality assurance checking in the early hours of tomorrow morning. She doesn't need to see where I've changed my mind, but will need to see a version with redactions highlighted so she can consider what has been redacted." |
| A42638858 | 21 March 2021 | 1701 | [redacted] to [redacted] cc [redacted] and [redacted] – attaches final PDF of the Redacted version and the highlighted version for QC purposes. |

File note- secretariat to Mr Hamilton

This file note sets out a contemporaneous record of consideration of the following issues.

As part of his Ministerial Code investigation, Mr Hamilton requested a court transcript of evidence given in the Alex Salmond criminal trial.

In my role as Secretariat to Mr Hamilton, I reviewed the document. In doing so I recognised the names of two individuals named in the transcript.

I have considered whether this would impede my ability to provide suitably independent, unbiased support to Mr Hamilton.

[redacted]

[redacted]

I have sought advice from colleagues [redacted] and from more senior colleagues providing senior oversight of this work, who have confirmed they are content with the approach set out above.

I will keep this under review as the work progresses.